TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 195~~2~~ 4

~~No. 70~~

CHARLES AUGUSTUS DIXON, PETITIONER,

vs.

CLINTON T. DUFFY, WARDEN, SAN QUENTIN PRISON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITION FOR CERTIORARI FILED JANUARY 13, 1951.

CERTIORARI GRANTED MAY 28, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 79

CHARLES AUGUSTUS DIXON, PETITIONER,

vs.

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INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 11, 1951.

[fol. 1]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Crim. No. 42454

In the Matter of the Application of CHARLES AUGUSTUS DIXON, In Propria Persona

PETITION FOR WRIT OF HABEAS CORPUS—Filed October 21, 1950

Your Petitioner respectfully states:

I.

That he is being illegally held imprisoned in the State Prison of San Quentin under the Director of Corrections and Warden Clinton T. Duffy, on a sentence from San Francisco County, City of San Francisco, State of California, for the violation of the California State Penal Code No. 480, to-wit 'Making or Possessing Counterfeit Dies or Plates', wherein he was illegally tried and sentenced, on or about April 8, 1949.

II

That Petitioner did forfeit his legal right to appeal as permitted by law, due to Petitioner's ignorance of the California State Law on Appeal. That Petitioner being unaware that he had only eleven days in which to file for appeal, did unknowingly lose said right to appeal. That Petitioner had not at that time, now at any time since, the funds necessary to order trial transcripts of Petitioner's trial by jury, thereby perfecting said appeal. That Petitioner did file a copy of this petition in the Marin County Superior Court, and was denied a hearing on or about the 27th day of July 1950. That Petitioner did then file a copy of this petition in the District Court of Appeal, and was [fol. 2] denied a hearing on or about the 12th day of September, 1950. That Petitioner is and indigent person, entirely without funds, and does respectfully request that this Honorable Court to order that he may proceed in this

matter in forma pauperis, and that copy transcripts of Petitioner's trial by jury be prepared for the use of the Petitioner and of this Court.

III

That on or about the 19th day of November, 1948, Petitioner was at his home at 881 Eddy Street, City of San Francisco, State of California, when the door bell rang. That when Petitioner did answer said door he was immediately accosted by two unknown men dressed in civilian clothing. That both said men, without the formality of identifying themselves, did with malice and aforethought, illegally and brutally force their way into Petitioner's home. That only after said brutal and illegal, forceful entry of Petitioner's home, did said unknown and unidentified men make known that said men were Officers of the law, namely one Lieutenant Dan. McKlem (phonetic spelling) and one Inspector Finley (phonetic spelling). That said Leiutenant McKlem attemtped to divert Petitioner's attention by questioning Petitioner, while aforementioned Inspector Finley, did surreptitiously and illegally proceed, without permission of Petitioner, or the legal search warrant as required by the Constitution of the State of California, Art. 1, sec. 19, to search Petitioner's home. That when Petitioner did [fol. 3] demand to be presented with a legal search warrant, as was his legal right as an American citizen residing in the United States of America, and as required by the Constitution of the United States, and the Constitution of the State of California, both aforementioned Officers did with malice and aforethought, brutally pounce upon, seize and pummel Petitioner. That aforementioned Inspector Finley did then stand over shackled Petitioner with a drawn firearm, namely one revolver, and orally issue further threats of violence at Petitioner, while aforementioned Lieutenant McKlem did willfully and illegally prowl through and search Petitioner's home. That one of the aforementioned Officers did then, without permission of Petitioner, or any legal authority, use Petitioner's personal and private telephone to call Officers of the United States Secret Service. That within the hour Officers of the United States Secret Service did arrive at Petitioner's home, to then be admitted by aforementioned Lieutenant McKelm. That said Lieutenant McKelm did then hold a secret conference with aforemen-

tioned Officers of the United States Secret Service, in another room from that in which Petitioner was being held. That the Officers of the United States Secret Service did then approach Petitioner, and inform Petitioner that they were Burns (phonetic spelling and Giovanetti (phonetic spelling), and that Petitioner was now under legal arrest of the United States Government. That Petitioner was to sign a waiver of his legal rights against unlawful search and seizure, that if Petitioner did not sign said waiver, one of [fol. 4] the Officers then present could leave and procure one within a very short time, and that it "would then go harder on Petitioner, and that Petitioner's wife would also be arrested and confined to a Prison as Petitioner's conspirator." That after said waiver had been signed other Officers were admitted to Petitioner's home, for the purpose of taking photographs and further searching of Petitioner's home. That Petitioner was then taken to the Offices of the United States Secret Service and further threatened with the imprisonment of Petitioner's wife, if Petitioner did not sign a declaration or confession implicating Petitioner in the felonious crimes of photographing United States Government obligations, and of making and possessing counterfeit plates of United States Government obligations. That Petitioner in actual physical pain and a state of mental confusion, and without being given the privilege of reading said declaration or confession, did sometime during the late afternoon of November 19, 1948 sign said declaration or confession. That Petitioner was then forced to pose in the Offices of the United States Secret Service, under simular threats mentioned above, before members of the leading newspapers of the City of San Francisco, State of California, with articles obtained illegally from Petitioner's home. That Petitioner was then taken to the San Francisco, City Jail, State of California and booked under the ambiguous charge of 'enroute to the United States Secret Service'. That Petitioner was held without any formal charge, benefit of bail or right to legal counsel until the [fol. 5] afternoon of November 22, 1948, at which time Petitioner was taken before United States, Commissioner Fox for a preliminary hearing. Petitioner did at that time, and upon the advice of Inspector Burns of the United States Secret Service, waive a preliminary hearing. That on or about December 1, 1948 a United States Federal Grand Jury

returned an indictment against Petitioner, charging Petitioner with the violation of Title 18 U. S. C., sec. 474 (photographing obligations of U. S.) and Title 18 U. S. C. sec 264 (making plates to print Government obligations without authority). That on or about January 6, 1949 the Honorable Judge Dal. M. Lemmon, District Judge of the United States District Court for the Northern District of California, did sustain a motion, made by Petitioner's Counsel, to suppress the illegally obtained evidence (U. S. v. Dixon No. 31783-H). That on or about January 24, 1949 the United States Attorney did file a written Nolle Prosequi, and Petitioner was ordered released from custody. That aforementioned Inspector Finley did appear at the County Jail, in the City of San Francisco, State of California, where Petitioner was at that time being held, at about (7) seven o'clock (the exact date is unknown) and order Petitioner's release. Petitioner after being released was shackled by the aforementioned Inspector Finley and taken to the City Jail, City of San Francisco, State of California, where he was re-booked and charged with the violation of the California State Penal Code No. 480 (making or possessing counterfeit dies or plates). That on or about February 3, 1949, Petitioner was indicted by a secret Grand Jury, which did base it's findings from the *illegally obtained evidence presented* by the District Attorney of the City of San Francisco, State of California, and obtained in some dubious and surreptitious manner for the United States Secret Service. That on or about February 24, 1949, Petitioner did stand before the Honorable Albert Wollenburg, (phonetic spelling). Judge of Dept. 6, Superior Court, in and for the City of San Francisco, State of California, and enter a plea of "Not Guilty" to the charge of violating the California State Penal Code No 480. Petitioner did at that time enter a formal admission to having had (2) two prior felony convictions. That Petitioner's Attorney did enter a motion, simular to the preceeding action in the United States District Court, to have the illegally obtained evidence suppressed, and did endeavor to show the Court, that *this was the same evidence*, that had been *ruled* upon in a preceeding collateral judicial proceeding is the said United States District Court. Petitioner's Attorney did stress that this was the *same* illegally obtained evidence, that had been *ordered returned* to Petitioner, and that this order had

never been complied with. Petitioner's Counsel did stress, that to use said evidence would effect a violation of Petitioner's Civil Rights, and would in reality be the effect of forcing Petitioner to testify against himself. That the Court did rule (in effect only), "that the preceeding ruling in Federal District Court, did not apply in the State Courts of California, and that the motion to suppress the evidence [fol. 7] was therefore denied." That on or about March 29, 1949, Petitioner was then subjected to an illegal, and prejudiced trial proceedings before a jury, in the aforementioned Superior Court. That on or about March 31, 1949 sometime in the late evening (the exact time is not known to Petitioner at this date), the aforementioned trial jury did return a verdict of "Guilty". That on or about April 8, 1949, Petitioner did stand before the aforementioned Judge Wollenburg, and recieve a sentence of from (1) one to (14) fourteen years in the California State Prison at San Quentin, California, where Petitioner is now being illegally restrained of his liberty.

IV

That the State of California had no legal jurisdiction to take Petitioner into a California State Trial Court for an alledged violation of *Federal Obligations*. That it is now and has been since 1789, an *expressed law*, that *only* the Congress of the United States can issue, make or effect Federal bank notes, and or currency. It has also, since the aforementioned date, been an expressed law that the Congress of the United States will punish violators of the aforementioned *Federal Obligations*. Petitioner respectfully wishes to emphasize, that this is not an *Implied Law*, or one that can or may be construed to serve an occasion, but an *Expressed Privilege*, given only to the Congress of the United States. Chapter 4 of the U. S. Code, Title 18, specifically lists the charge of counterfeiting Federal "Obligations" as (Offences against Operation of Government). Petitioner also respectfully wishes to cite that U. S. Code, [fol. 8] Title 18 (Criminal Code, sec. 147) entitled, Obligation Against Currency, Coinage, etc., specifically states:

> The word "Obligation or other security of the United States" shall be held to mean all bonds, certificates of indebtedness, national bank currency, coupons, United

States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, etc.

Petitioner does not believe that any State under the color of State authority, whether the motive be impersonal, or of a personal nature, can make, or enact, or enforce any legislative law, bill, or Penal Code, that will in any way stand in the way of, or conflict with, the United States Constitution. Petitioner does also believe that any State legislation, bill, or Penal Code conflicting with, or against the Constitution of the United States and the *Expressed* Laws of Congress, or impairing the full operation of their provisions, could not be legal legislation, bill, or Penal Code. Petitioner does believe that it is competent for a State to enact laws on a subject at a state prior to that which the Constitution and Federal laws have designated as the time at which they take cognizance of it, provided that such enact-[fol. 9] ments are not in-consistent with the end named in the Constitution of the United States. Petitioner respectfully submits that if this rule is applied, the Federal laws with relation to counterfeiting "Obligations" of the United States Government, have been completely ignored, and rendered wholly in-effective when Petitioner was indicted, tried, and sentenced for the Alleged violation of the California State Penal Code No. 480, and that this aforementioned indictment, trial, and subsequent sentencing of Petitioner to a California State Prison, did amount to a fraud on the person of the Petitioner, the Constitution of the United States, and the people thereof. To substantiate the above statements Petitioner wishes to submit the reasoning set forth in support herein below:

U. S. Constitution Amendment XIV.

No State shall make or enforce any law which shall abridge the immunities of citizens of the United States: . . .

California Constitution, Art. 1, sec. 3.

The State of California is an inseperable part of the

U. S. Constitution Amendment X; sec. 1.

> The powers not delegated to the United States by th Constitution, nor prohibited by it to the St tes, ar [fol. 10] reserved to the States respectfully or to th people.

Petitioner submits that his particular case is not the firs of it's kind to have been before a California State La Court, and Petitioner is also aware that it has been decide in certain previous trial courts, in the State of Californi that the California State Penal Code No. 480, as ambiguou as it has sometimes been construed, can and does cover vi lations of Government "Obligations". Petitioner doe respectfully stand in the fact of these previous decision and does contend, that if the Constitution of the Unite States is indeed the *supreme law* of the land, then the Cal fornia State Penal Code No. 480, could only be held to cove such violations that are in *direct* violation to the State c California, it's *controlled* securities, bank bills *issued* b banks, and *subject* to *their* control, and or of State issuance not *under direct control* of the Federal Government, an within the scope of State powers as *enumerated and define* by the Constitution of the United States. Petitioner has no been made aware of the fact that the Congress of the Unite States has at any given time, given the State of Californi or any of the other States, the privilege of taking judici proceedings in and for alleged violations of United State Government "Obligations".

U. S. Constitution, Art. IV, sec. 1:

> Full faith and credit shall be given in each State t [fol. 11] the public acts, records, and judicial proceed ings of every other State. And the Congress may b general laws prescribe the manner in which such act records, and proceedings shall be proved, and the effe thereof.

Petitioner is aware that public policy or belief ca play no actual part in defining, or construing the designe course of law. Petitioner respectfully wishes to subm that he is not basing his reasoning on the fact that ever public school in the United States of America teaches tha the Constitution of the United States is the *supreme la*

ments, by any and all of the States, but that Petitioner is basing his reasoning on the individual laws of the Constitution of the United States, it's Amendments, and their collaborate subordinate, the U. S. Code. Petitioner respectfully wishes to submit for the clarification, and the substantiation of his reasoning, a few of the many laws on the subject of Federal "Obligations". U. S. Constitution Art. 1, sec. 8., entitled—Powers Granted to Congress—, specifically states:

subsection 1.

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

subsection 6.

> [fol. 12] To provide for the punishment of counterfeiting the securities and current coin of the United States.

It is Petitioner's contention, based upon the laws of the Constitution of the United States, the Constitution of the State of California, and the United States Code, that the State of California did have no actual, or moral jurisdiction over Petitioner at any time during, or after his actual arrest. If Petitioner's contentions are held to merit, and if the Constitution of the United States, and the Constitution of the State of California are held to be valid, then this Honorable Court, can and will reverse the present illegal and unlawful judgment rendered in the aforementioned trial Court. Petitioner submits that there are numerous authorities on the subject of a conviction obtained by fraud, or one gained where there was no actual jurisdiction. Petitioner's intention is not to bore this Court by citing unnecessary, or superfluous information to this Honorable Court, therefore Petitioner respectfully submits only these two authorities on this subject.

Lapham v. Campbell, 61 C. 299
Hill v. City Cab Co., 79 C. 190

> "Where a judgment is obtained by fraud and where by reason of the fraud the court that rendered the judgment had not required jurisdiction of the person of the defendant, a court of equity will set aside such judgment without any question as to merit."

[fol. 13] Petitioner does submit, that, the State of California does contend, that, although the Constitution of the United States does specifically mention, and list among *it's personal* privileges, that of "to provide for the punishment of counterfeiting the securities and current coin of the United States," it does not prohibit any State from making a simular law, and enforcing same. Petitioner, on the other hand does contend that any law or privilege, specifically mentioned or listed (as a right of the Federal Government), in the Constitution of the United States, is an *Expressed Law,* and as such is an automatic bar to any State's jurisdiction, or subsequent prosecution.

U. S. Constitution, Art. 1 sec. 10, subsection 1:

> No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver a tender in payment of debts; pass any bill of attain-er, ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

Petitioner respectfully cites from the Federal Law Book entitled "U.S. Code", the following facts which Petitioner does believe will prove his contention, that the Congress of the United States, the Federal Government, and the Constitution of the United States did intend to, and does reserve the exclusive right to make, issue, and protect it's [fol. 14] Government "Obligations". Under the herein below listed section of the U.S. Code, Title 31, the United States Government Does emphatically reserve the right to:

section 406:
to issue si-ver certificates
regulate denomination
retire or cancel
re-issue in substitution
section 407:
redeem fractional currency
section 413:
regulate whose portrait is placed on said currency
section 415
engrave and print said currency
section 416:
appoint officers, employees, and purchase machinery, and materials to make or print, said currency

section 417:
pay for issuance of said currency
section 418 and 419:
make provisions to manufacture and purchase materials necessary for producing the distinctive paper, for said [fol. 15] currency
section 420:
to replace the mutilated notes, etc.
section 421:
to destroy said notes, or currency
section 422:
how to destroy said currency
section 423:
to make provisions to launder said notes, or currency
section 424:
to mark counterfeit

Petitioner also respectfully submits that the Congress of the United States did go much further into this so important subject of jurisdiction over United States Government "Obligations". U. S. Code, Title 31, section 427; entitled "Rules and Regulations" reads as follows:

> "The Secretary of the Treasury shall make and issue from time to time such instructions and regulations to the several collectors, receivers, depositaries, officers, and others who may receive Treasury notes, United States notes, or other securities of the United States, or who may in any way be engaged or employed in the preparation and issue of the same, as he shall deem [fol. 16] best calculated to promote the public convenience and security, and to protect the United States, as well as individuals, from fraud and loss.
>
> (R.S. sec. 251)

Petitioner also does respectfully submit to this Honorable Court, that there are other rules and regulations listed under U. S. Code, Title 31, sec. 448a, and more emphatic and definate definitions are also listed under U. S. Code sec. 448b. Petitioner also re-pectfully submits that the U. S. Code, Title 31, sec. 146, entitled "Divisions of Issue and of Redemption", does most emphatically clear up the question of whether the State of California could at any time, and for any reason, take jusicial proceedings on any individual accused of "making or possissing counterfeit dies or

plates," of United States Government "Obligations". Petitioner does submit that the U. S. Code, Title 18. (U. S. Criminal Code) does make ample protection for United States "Obligations" in many of the sections therein listed. Petitioner does respectfully submit that in spite of these, and numerous other proofs not listed in this petition, of the State of California's overwhelming lack of discretion and jurisdiction in this matter, Petitioner is even now serving an illegal sentence in the California State Prison at San Quentin, California, where he does pray that this Honorable Court will grant him the succor he seeks.

V

[fol. 17] That Petitioner did not sign the aforementioned declaration or confession volumtarily. That said declaration or confession did play an important role in the aforementioned illegal trial Court, and or of Petitioner's subsequent conviction. That Petitioner had suffered an extremely severe physical beating shortly prior to the signing of said declaration or confession. That the aforementioned Inspector Finley, together with the aforementioned Lieutenant McKlem did willfully and maliciously pummel Petitioner repeatedly in the region of the solar plexus, and about the neck muscles behing the head. That the aforesaid pummeling did effect Petitioner to the extent that he could neither hold food on his stomach, nor breathe normally for at least two days. That Petitioner did suffer from continual headaches for approximately the same length of time. That the aforementioned Law Officers do deny beating Petitioner while Petitioner was alone in their custody, but that Exhibit A of Petitioner's application, will show that there was an admitted scuffle in Petitioner's home prior to the actual admission of the aforementioned Officers of the United States Secret Service. That Petitioner was threatened with the subsequent incarceration of Petitioner's wife, if Petitioner did not sign the aforementioned declaration or confession. The Officers do also deny this latter statement, and because they were Law Officers, and Petitioner was or had been convicted of two previous felonies, and because there were no witnesses to the aforementioned beating, or the persecuting tactics applied in gaining Petitioner's signature to the aforementioned dec-
[fol. 18] laration or confession, the aforementioned Law

Officers have been believed implicitly in all their denials of Petitioner's aforementioned charges concerning Petitioner's brutal treatment, both physical and mental. Petitioner respectfully request this Honorable Court to bear with Petitioner as he submits this reasoning. That Petitioner did *live alone with his wife* at the aforementioned address at 881 Eddy Street, City of San Francisco, State of California. That when Petitioner was taken into custody at his home on the morning of November 19, 1948, the *only other person* living at that apartment, was Petitioner's wife who was even at that time practicing her profession as a Registered Nurse at the Franklin Hospital, City of San Francisco, State of California, and that said Officers were aware that the aforesaid Franklin Hospital, was *less than a mile distant to Petitioner's home.* That the aforementioned Law Officers *had never met Petitioner's wife,* and that *in spite* of allegedly finding a private home fully equipped with apparatus allegedly being used in the commission of a felonious crime against the United States Government, the aforementioned Law Officers *did not even go to the trouble* of questioning Petitioner's wife. That Petitioner, with the aforementioned Officers of the United State Secret Service *permission,* was first to inform said Petitioner's wife that Petitioner had been arrested. That Petitioner's wife was informed of Petitioner's arrest by Petitioner by telephone, from the Offices of the United States Secret Service at approximately (2) two P.M. fully [fol. 19] (5) five hours after Petitioner's arrest. That Petitioner's wife did not meet any Officers of the Law, *until the following day* November 20, 1948; when Petitioner's wife did *voluntarily* go to the Offices of the United States Secret Service, and *voluntarily* make her statement. Petitioner does contend, and hereby state as he did in the aforementioned trial Court, that this was one of the prices paid Petitioner for signing said declaration or confession. Petitioner respectfully wishes to submit that a declaration or confession obtained under the abovementioned stipulations, could not and cannot be termed a legal, or voluntary declaration or confession.

Yarbrough v. Prudential Ins. Co. of America, 99 Fed. Rep. 874

> Declarations to be relevant as evidence must have been voluntary and free from studied design.

Petitioner respectfully states, and believes that Exhibit A will prove that Petitioner could not have signed said declaration or confession voluntarily. The Honorable Dal M. Lemmon, United States District Judge, in and for the Northern District of California, Southern Division, had this to state regarding Petitioner's aforementioned declaration or confession:

Exhibit A.

> "Its admissibility as evidence may be later determined at the trial or at a pre-trial conference. There may be circumstances bearing upon the admissibility which [fol. 20] were not presented at the hearing. Such circumstances may relate to the questions as to whether the delay in committing the petitioner was "unnecessary" and as to whether the confession was voluntary or involuntary. Bearing upon the problem generally attention is called to McNabb v. United States, 318 U.S. 332 and Upshaw v. United States, decided by the Supreme Court December 13, 1948."

Petitioner also wishes to call further attention to Exhibit A, where *some of the events* prior to the actual signing of the said declaration or confession are frankly stated by the abovementioned, Honorable Dal M. Lemmon, United States District Judge.

Exhibit A.

> "He had been overpowered, (the police officers admit that there was a scuffle following defendant's query about a search warrant) handcuffs had been placed upon him and a search had been made. There is present coercion, both physical and psychological. He knew that incriminating evidence had been found by the officers through the search. Those facts negative [fol. 21] the assertion that the consent was freely given. It is clear that coercion was still exerted when the consent was given. This and the hop-lessness of his position resulting from the violation of his rights motivated the consent."

Petitioner submits this reasoning to the above quotes from the Honorable Judge Lemmon's brief. If coercion could be found, from both a physical and psychological

aspect, *shortly prior to the actual signing* of the said declaration or confession, then it must be doubly apparant when Petitioner was forced to sign said declaration or confession. Petitioner respectfully cites the following authorities to further his contentions.

Sealy v. State, Pac. Rep. 87 2d 166

> "A statement or confession, to be admissible must be free and voluntary." . . . "A statement or confession, in order to be admissible must not be extracted by any sort of threat or violence, or obtained by any direct or implied promises, or by exertion or any improper influences."

Petitioner respectfully wishes to bring to the attention of this Honorable Court, that the motion to sup-ress said declaration or confession had been denied *without prejudice*, and was subject to further motion or attention, before actual trial, or pre-trial proceedings. To this Petitioner respectfully cites.

[fol. 22] The People v. Thomas J. Patton, 49 Cal. Rep. 632

> A "confession" recievable in evidence only after proof that it was made voluntarily, is restricted to an acknowledgment of the defenadnts guilt; and the word does not apply to a statement, made by the defendant, of facts which tend to establish his guilt.

Petitioner contends that it has been universally held that any declaration or confession obtained through or upon bribery, of any kind, is indeed an illegal document, and therefore cannot be used in any court of Law as evidence against the defendant.

The People v. Louis E. Borrie, 49 Cal. Rep. 342

> A confession of a crime made to one in authority, upon a promise to the accused that it will be better for him to make a full disclosure, is not admissable in evidence upon the trial of the accused, because it is not voluntary.

Petitioner does charge that the aforementioned Superior Court, did not attempt to qualify said declaration or confession. That said declaration or confession was used in connection with gaining the illegal conviction, and it's sub-

sequent illegal sentence, of which Petitioner is even now petitioning this Honorable Court for the succor he seeks.

VI

[fol. 23] That the previous judicial proceedings in the aforementioned United States Court, did in effect, *erect a bar* to further judicial proceedings on a *simular indictment*, for the same alleged crime, in another trial Court of *equal jurisdiction*, unless upon *direct order* of the trial Court of *prior jurisdiction*. Petitioner does submit this authority to substantiate his reasoning.

Ex Parte Henry Williams on Habeas Corpus, 116 Cal. Rep. 512

> Under sect. 1008 of the Penal Code the allowance of a demurrer to an information is a bar to another prosecution for the same offense, unless the court, being of opinion that the objection may be avoided by a new indictment or information, directs the case to be submitted to another Grand Jury, or directs a new information to be filed; and where upon sustaining a demurrer to an information, the court merely sustains it, "with leave to the district attorney to file a new information," such permissive order is not equivalent to the direction of command contemplated by that section, the prosecution is at an end, and the prisoner cannot be held for a trial under a new information, and will be discharged from custody upon a habeas corpus.

[fol. 24] Petitioner contends that the District Attorney of the City of San Francisco, State of California was and is *guilty* of obstructing Justice, section 134 California Penal Code. Petitioner does also contend that the aforementioned District Attorney, together with the aforementioned Superior Court, are both guilty of *contempt of Court*. Petitioner offers this reasoning in substantiation thereof. It would be a cheap mockery to justice, and a direct insult to all of the Courts in the United States of America, and to the people of this Democracy who have placed their faith in the laws of our country and the Courts thereof, *if we are to believe* that the aforementioned District Attorney, together with the aforementioned Superior Court, *did unknowingly participate* in the prosecution of

a trial Court in which all the evidence (with the exception of the aforementioned declaration or confession) had previously been declared as illegally obtained evidence, and as such had been ordered *suppressed*, and *returned to the Petitioner*, by the United States Courts. That the said District Attorney, together with the aforementioned Superior Court, *were unaware*, that for *this reason* and *this reason alone*, the United States Attorney had filed a "Nolle Prosequi" in the Federal case, on or about January 24, 1949. Petitioner does believe that both the aforesaid District Attorney, and the aforementioned Superior Court, had *deliberate intentions* of participating in a fraud, as well as their having *full knowledge and comprehension* of being in *direct contempt* of the United States Courts, when they did order the aforementioned trial proceedings to [fol. 25] continue in the aforementioned Superior Court. Petitioner offers a few of the many citations and authorities on the subject of collateral, co-ordinate, and or concurrent jurisdiction.

Hayes v. Dayton, 20 Fed. Rep. 690

> One court does not reverse or review judgment of a court of co-ordinate jurisdiction.

Owens v. Ohio Cent. R. Co., 20 Fed. Rep. 10

> A court, having gained prior jurisdiction of a cause by reason of it's process, is not deprived of it's jurisdiction by reason of the actual seizure of the property in controversy by the officer of a court having concurrent jurisdiction.

Petitioner does contend that the United States Attorney, and the District Attorney of the City of San Francisco, together with the aforementioned Officers of the United States Secret Service, did conspire illegally against Petitioner, and that the aforesaid District Attorney of the City of San Francisco, together with the aforementioned Officers of the United States Secret Service did participate in the aforesaid illegal trial of Petitioner, and or with the complete sanction of the abovementioned Superior Court. Petitioner respectfully states that the California Supreme Court, (re: Crim. No. 5046, Kimler on Habeas Corpus, April 28, 1950) did decide this all import-

ant question of previous jurisdiction. Petitioner further states that the Superior Court of the City of San Fran- [fol. 26] cisco, State of California, could not have legally processed Petitioner through the aforesaid illegal trial proceedings, unless upon *direct orders* from the Court of prior jurisdiction. That *this was not a privilege* of the abovementioned United States Attorney, nor of the abovementioned District Attorney of the City of San Francisco, State of California. That *only upon the direct orders* from the aforementioned Honorable Dal M. Lemmon, District Judge of the United States Court, could the prior indictment be formally abandoned in the United States Court, and a re-indictment (on the same, or stem-ing from the same charges) drawn against Petitioner in the aforementioned Superior Court. Petitioner pleads that the laws of the United States, and the laws of the State of California were not properly adhered to, and Petitioner does further state that if the laws of the United States, and the laws of the State of California had been adhered to, Petitioner would not at this time be petitioning this Honorable Court for the succor he seeks.

VII

That aside from the above-listed infractions against Petitioner and the United States Courts, Petitioner does respectfully state that he was denied even the ordinary privilege of Due Process of Law, that is held to be the privilege of every unfortunate who stands before the bar of justice. Petitioner states, and as the trial transcripts will show, that on at least (2) two major counts, Due Process of Law was deliberately ignored, by both the aforementioned prosecuting Attorney, and the officials of the [fol. 27] aforementioned Superior Court.

1. That on or about February 24, 1949 Petitioner did enter a formal admission to having had (2) two prior convictions and or of constituting felony-s, of which Petitioner had been duely sentenced and incarcerated for. That this "formal admission" was entered at the same time and date that Petitioner did enter his plea of "Not Guilty" to the aforementioned charge of violating the California State Penal Code No. 480. That Petitioner did enter said "formal admission" of his prior felony con-

victions to avail himself of the protection afforded in the California State Penal Code No. 1025.

California Penal Code No. 1025

> In case the defendant pleads not guilty, and answers that he has suffered the previous conviction, the charge of the previous conviction must not be read to the jury, nor alluded to on trial.

Petitioner does submit that the prosecuting attorney, Mr. Thomas C. Lynch, (phonetic spelling) Chief Assistant Attorney, did many times remark and allude to Petitioner's prior convictions. Petitioner knows, as did the presiding Judge, that the aforementioned Mr. Lynch's remarks were not directed at the credibility of the defendant as a witness, but to prejudice the Jury against Petitioner as a habitual criminal. Petitioner further states that the aforementioned Mr. Lynch, not being satisfied with acting as the chief prosecutor in an illegal prosecution, nor content with deny- [fol. 28] ing Petitioner, Due Process of Law, did force Petitioner to read to the Jury and the Court passages regarding his aforementioned Prior Convictions. That the aforementioned Mr. Lynch, did have the aforementioned Mr. Burns of the United States Secret Service, allude to and read said passages of and or concerning Petitioner's prior convictions.

People v. Ford, 89 ACA 522, 526

> "Every defendant has the unquestioned right to a fair trial, conducted substantially in *o*ccordance with law. Prosecuting officers must learn that the doctrine which proclaims that the respect for the law cannot be inspired by withholding the protection of the law from the accused, is one which recognizes no exceptions. Whether guilty or innocent, the defendant was entitled to have his case fairly tried according to the established rules of law."

People v. Mohr, 157 Cal. 732, 735

> It is elementary that a defendant on trial for a specific offense may not be discredited in the minds of the Jury by evidence of specific acts in his past

life nor connected in any way with the matter under investigation, either offered in chief by the district attorney, or elicited under cross-examination.

[fol. 29] People v. Whiteman, 114 C. 338, 46 P 99

"It is not the policy of the law to allow proof of the bad character of a defendant accused of crime, as a step in the proof of guilt."

People v. Cook, 148, C 334, 340; 88 P 43

"The prosecution is not allowed under our law to attack the defendant's character by evidence of general repute, except in rebuttal of evidence on that point first introduced by him."

People v. Adams, 76 CA 178, 244 P 106

"Where the defendant made no attempt to prove he was of good character in respect to the traits involved in the charge, it was not allowable for the prosecution to prove his bad character, even if the evidence had related to such traits, it having no tendency to prove the commission of the crime."

People v. Buchanan, 119 CA 523, 6 P 2d 538

"The issue as to bad character can be raised only by the defense first introducing evidence of good reputation whereupon the prosecutor may meet such proof by evidence of bad reputation."

[fol. 30] Petitioner respectfully wishes to submit that on the herein above mentioned breach of Due Process of Law, the Chief Assistant District Attorney, the aforementioned Mr. Lynch, was guilty of gross and deliberate misconduct, the subject of which is a just cause for reversal by this Honorable Court.

2. That the abovementioned Mr. Thomas C. Lynch did deliberately and maliciously enter into the Superior Court's records, irrelevant and immaterial evidence, that did not, and could not have any bearing on the charges against the Petitioner. That the aforementioned Mr. Thomas C. Lynch did have said irrelevant and immaterial evidence introduced to the members of the Jury, sole-y for the

purpose of having said Jury overawed at the supposedly overwhelming amount of evidence. That the aforementioned Mr. Thomas C. Lynch did deliberately and maliciously prevaricate concerning evidence *that did have direct bearing* on Petitioner's actual conviction in the aforesaid Superior Court. That the aforementioned Mr. Thomas C. Lynch did deliberately and maliciously fabricate, and allude to evidence where none did exist. Petitioner does realize fully the magnitude of his charges; as herein listed above, but Petitioner does contend, and as the trial transcripts will prove (that if any discr-pancies exist in the above listed statements, they could only be where Petitioner has *under stated*, rather than *over stated* the facts). To further clarify the above charges Petitioner will list, and specify individually the aforementioned charges herein below.

[fol. 31] (a) That the aforementioned Mr. Thomas C. Lynch did enter into the aforementioned Superior Court, and present to the aforementioned trial Jury, such irrelevant and immaterial evidence as; receipts for pencils, ink pens, paper and other materials, all of which could not under the wildest stretch of anyone-s imagination be construed as materials used in counterfeiting; receipt for a driving license that Petitioner had previously procured in compliance with the California State Laws, governing the privilege of operating motor vehicles in the State of California, and which Petitioner does not believe could in any way be construed as evidence of the crime Petitioner was charged with; receipt for an electric phonograph, of which to the best of Petitioner's knowledge could have had no bearing on the case before the aforementioned Superior Court; receipts for miscellaneous publications, and of books, of which were in no way ever shown to have any connection with the alleged violation of the California State Penal Code No. 480.

(b) That the aforementioned Mr. Thomas C. Lynch [fol. 32] did deliberately prevaricate concerning evidence that *did have direct* bearing of Petitioner's eventual conviction. Said prevarication taken place over a piece of technical photographic equipment, did sway aforementioned trial Juries opinion against Petitioner. That in spite of Petitioner's Counsel object-

ing, and even though Petitioner himself did attempt to prove that the above stated photographic equipment, namely, a "printing frame", was actually a (4) four by (5) five inch "printing frame", the aforementioned Chief Assistant District Attorney, did insist to the contrary, and continually refer to same as a (5) five by (7) seven. It is Petitioner's belief that this Honorable Court, even as the aforementioned trial Jury, *being laymen in the photographic field*, might miss the significance of the aforementioned Mr. Thomas C. Lynch's deliberate prevarication. This "printing frame" was an Eastman Kodak product (stamped with the trade name and size, by the Company, on the reverse side) and as a (4) four by (5) could not, as the aforementioned Mr. Thomas C. Lynch deliberately [fol. 33] contended, the "printing frame" had been a (5) five by (7) seven, as was *all the other photographic equipment listed as evidence*, then there might have been some legal room for the aforementioned Chief Assistant District Attorney's conjecture, that this "printing frame" had been used in the making of counterfeit dies or plates.

(c) That the aforementioned Mr. Thomas C. Lynch did take an ordinary receipt of a bill Petitioner had recieved in payment of a legal debt, and with implicating gestures, as well as implying interrogation of Petitioner, actually fabricate evidence, and or implication of evidence, and implanting same in the minds of the aforementioned trial Jury. Petitioner contends that this receipt was printed on *pink paper*, or a *simular appearance* to that issued by the *traffic police* in and for the City of San Francisco, State of California. That on an evening months prior to Petitioner's arrest, (the actual date is unknown to Petitioner) he did place said receipt under the windshield wiper on the automobile of Mr. Clifton C. Leavitt, an acquaintance of [fol. 34] Petitioners. Petitioner has forgotten the exact legend he had written on this aforementioned receipt, but *in effect only*, it did read: Hi Cliff: bet I scared you, didn't I! Chuck. Petitioner did attempt upon the interrogation of the aforementioned Mr. Thomas C. Lynch, to show that Petitioner had attempted a practical joke on the aforementioned Mr.

Clifton C. Leavitt, by making it appear upon first glance that the aforementioned automobile had recieved a traffic violation ticket. The aforementioned trial transcripts, will show that the aforementioned Mr. Thomas C. Lynch did not at any time prior to the questioning of Petitioner, attempt any explanation for entering this evidence into the aforementioned trial Court, nor did he rectify this discrepancy at any later time. Petitioner also contends that the aforesaid trial transcripts *will not* show *why* the aforementioned Mr. Thomas C. Lynch *did ask* Petitioner to read the abovementioned *written legend* to the aforementioned trial Jury. Petitioner further contends that the aforementioned trial transcripts could not [fol. 35] show the officacious gestures accompanying the aforesaid Chief Assistant District Attorney's sneer of disbelief, nor could the aforementioned trial transcripts divulge the patronizing expressions of understanding displayed upon the faces of the aforementioned trial Jury. If as Petitioner contends, the aforementioned Mr. Thomas C. Lynch had no moral or legal reason for entering the abovementioned receipt in evidence, *other than in vain hope* that Petitioner's motives in writing the abovementioned legend on said receipt, *might not have been* of as innocent a nature as Petitioner's explanation proved it to be. Petitioner contends that no one connected with law enforcement, had ever querried Petitioner, in any way with the abovementioned receipt, prior to Petitioner taken the Witness stand, therefore Petitioner is at loss to explain the aforementioned Mr. Thomas C. Lynch's condescending expression to the members of the Jury. Petitioner does contend that the aforesaid members of the trial Jury had been made aware in many ways of Petitioner's previous felony convictions, and that [fol. 36] the aforementioned Mr. Thomas C. Lynch, himself a past master in the art of confusing a Jury, did resort to a psychological means to implant in the minds of an already receptive Jury the fabricated implication of evidence that never did exist.

Petitioner respectfully submits that the abovementioned infractions of Due Process of Law do also amount to misconduct on the part of the aforementioned Chief Assistant

Attorney, and that the aforementioned Mr. Thomas C. Lynch *was aware, as was* the aforementioned trial Court, that with the abovementioned methods *being sanctioned* by the abovementioned trial Court, the aforementioned trial Jury, could find no other verdict, than that of "Guilty". Petitioner respectfully submits that while the reviewing Courts are disinclined to reverse a judgment upon the grounds of misconduct of the District Attorney, such misconduct is ground for reversal when it is such as would naturally prejudice the Jurors against the defendant. And it cannot be said with certainty that such misconduct was the turning point in the case to secure a conviction. (People v. Derwoe, 155 Cal. 592) Petitioner repeats that the misconduct of the aforementioned Chief Assistant District Attorney in continually bringing Petitioner's prior convictions to the fore, using irrelevant and immaterial evidence, the fabrication of evidence, together with the de-
[fol. 37] liberate prevarications concerning other evidence, did constitute misconduct, and did turn the aforementioned trial Jury against Petitioner. Petitioner respectfully contends, and as Allen once wrote, "Neither the lawmaker nor the public has any assurance that laws which provide for a delegation of authority to other humans (sic) will be administered in the same spirit and with the same intent which motivated its enaction." But Petitioner does also contend that his trial by Jury was in the California Court of Law, ans as such was subject to the laws of the State of California, as well as the laws of the Constitution of the United States of America. Petitioner respectfully submits the following authorities in substantiation thereof:

People v. McKenzie, 12 CA (2) 614:

"Where the District Attorney refers to matters not in evidence or expresses his own conclusions not founded on evidence or where he indulges in unwarranted attacks upon the defendant . . . such conduct must be construed as reversible error."

People v. Wong Ah You, 67 Cal. 31:

"The court reversed the conviction because the verdict was based upon a false statement made in regard to a matter in no way connected with the crime of which he was accused."

[fol. 38] People v. Valerie, 127 Cal. 65:

"Rebukes seem to have little effect on district attorneys and little on juries. The only way to secure a fair trial is to set aside verdicts so procurred."

People v. Grider, 13 CA 703:

"The misconduct of the district attorney in asking improper questions and maintaining a general atmosphere of adverse comment, remark, and running argument throughout the trial showed that his presumed purpose was to prejudice the jury against the defendant and constituted grounds for reversal."

People v. Fleming, 166 Cal. 357:

"A trial court should take every precaution to prevent anything be which the jury may be overawed and their minds influenced by an atmosphere supercharged with hostility or partiality."

People v. Cowboy, 7 CA 501:

"The district attorney has no right to make any insinuations as to improper matters that he could prove if he were not afraid of error."

Petitioner respectfully submits, that in reversing a con-
[fol. 39] viction in the (People v. Ford, 89 ACA 522) in December, 1948 Presiding Justice Shinn rendered a far reaching decision on the question of misconduct of the prosecutor. Petitioner believes that the judgment against him should be reversed, and does pray that this Honorable Court grant him the succor he seeks.

VIII

Petitioner respectfully submits that while the Constitution of the United States, and the Constitution of the State of California, both do specifically protect the Peoples of the State of California, and the United States, to be secure in their homes from unreasonable searches and seizures, the Honorable Law Courts of the State of California do not uphold this, their sacred oath (People v. Mayen, 188 Cal. 237.) Petitioner does respectfully contend that the State of

California did act in direct violation to the constitution of the United States, the Constitution of the State of California, the laws as set forth in the United States Code, and the California Penal Code:

U. S. Constitution, Amendment IV, sec. 1:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

[fol. 40] Constitution of the State of California, Art. 1, sec. 9:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

Skinner v. State, 87 Pac. Rep. (2) 341:

> "In order to justify the search of a person arrested and of his immediate surroundings, arrest must be made in good faith and not as excuse or subterfuge for purpose of making an unlawful search."

Petitioner respectfully acknowledges that authorities on the admissibility of evidence obtained illegally, are numerous, therefore known to this Honorable Court. Petitioner does not wish to attach the intelligence of this Court by citing superfluous citations, but does wish to emphasize the flagrant disregard shown the laws of the United States, and the laws of the State of California, by the aforementioned Dept. 6, Superior Court, in condoning the rude, wanton, aggravated manner, and the indication of malice with intent to injure, that was so apparent against Petitioner.

[fol. 41] U.S. Code, 287 (Criminal Code, sec. 173)

> The several judges of courts established under the laws of the United States and the United States commissioners may, upon proper oath, or affirmation, within their respective jurisdiction, issue a search warrant authorizing any marshal of the United States, or any other person specially mentioned in such warrant, to enter any house, store, building, boat, or other place named in such warrant, in which there shall appear probable cause for believing that the manufacture of counterfeit money, . . . etc.

Petitioner respectfully contends that both, the aforementioned Officers of the City of San Francisco, State of California, and the aforementioned Officers of the United States Secret Service, were guilty of breaking respectively, the laws of the California State Constitution, the laws as provided by the Constitution of the United States, the United States Code, and the Penal Code of the State of California, and as violators of the abovementioned legislatorials, were themselves subject to heavy fines, or jail sentences, and or both.

U.S. Code, Title 18, sec. 53a

> Any officer, agent, or employee of the United States engaged in the enforcement of any law of the United [fol. 42] States who shall search any private dwelling used and occupied as such dwelling without a warrant directing such search, or who, while engaged in such enforcement, shall without cause search any other building of property, shall be guilty of a misdemeanor and . . . etc.

U.S. Code, Title 18, sec. 51 (Criminal Code sec. 19)

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, . . . etc.

U.S. Code, Title 18 sec. 52 (Criminal Code sec. 20)

> Whoever, under color of any law, statu-e, ordinance, regulation, or custom, willfully subjects, or causes to be

subjected, any immunities secured or protected by the Constitution and the laws of the United States . . . . etc.

Petitioner respectfully submits that the California State Penal Code No. 1523, defines search warrants as follows:

California Penal Code No. 1523

[fol. 43] A search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for . . . . etc.

Petitioner further contends that the aforementioned Officers of the City of San Francisco, State of California, and the aforementioned Officers of the United States Secret Service, were in direct violation of the Penal Codes, No. 1524, No. 1525, No. 1526, No. 1527, No. 1528, No. 1529, No. 1530, No. 1535, No. 1537, No. 1538, no. 1539, No. 1540 and No. 1541, of the State of California. Petitioner further states, that by taking personal property by trespassing (trespass de bonis asportatis) the aforementioned Officers did violate Petitioner's Constitutional rights, and as such Petitioner prays that this Honorable Court will reverse the illegal judgment and it's subsequent illegal sentence, thus granting Petitioner the succor he seeks.

IX

Petitioner respectfully contends that he was unjustly convicted in the aforementioned Dept. 6, Superior Court, because of the introduction of the aforementioned illegally obtained evidence in direct violation to Petitioner's Constitutional rights, and his Civil rights of self-incrimination. Petitioner respectfully states that the Honorable Dal M. Lemmon, District Judge of the United States Court, did rule and order, that the aforementioned evidence *had been illegally obtained*, and that *all the evidence* other than the written statement, the photographs taken by the Officers, [fol. 44] and the written consent, be delivered to the Petitioner.

Exhibit A

"The motion to supress the seized evidence, including the photographs is granted. The evidence other

than the written statement, the photographs taken by the officers and the written consent is ordered delivered to the defendant. The motion to supress the confession is denied without prejudice,"

Dated: January —, 1949.

Dal M. Lemmon, United States District Judge.

Petitioner respectfully contends that if the above-stated Judicial Order had been complied with, then Petitioner could not have been forced to use said evidence against himself. Petitioner further contends that the aforementioned District Attorney of the City of San Francisco, State of California, was aware of the above-stated Judicial Order, when he did *use* this evidence to obtain the aforesaid illegal indictment against Petitioner. Petitioner does further contend that both, the aforementioned Chief Assistant District Attorney, and the aforementioned Honorable Judge Albert Wollenburg, were aware of the above-mentioned Judicial Order, when Petitioner was subjected to the aforementioned illegal trial proceedings in the aforementioned Superior Court. Petitioner does contend that the [fol. 45] aforesaid Mr. Thomas C. Lynch in his burning desire for a conviction, did willfully and knowingly overlook the fact, that he, Mr. Thomas C. Lynch, was in effect, compelling Petitioner to testify against himself, when he, Mr. Thomas C. Lynch did enter evidence into the aforementioned Superior Court, that *had been ordered returned* to Petitioner. Petitioner further contends that we would be accusing the Superior Court itself, of crass ignorance and deplorable inexperience, or both, if we were to assume that *it did not know* the wholly improper and inexcusable nature of the aforementioned evidence. Petitioner submits that if the aforementioned Superior Court had intended giving Petitioner a fair and legal trial, then the aforementioned Superior Court, would have been bound by the reasoning found in (Kohn v. Superior Court, 12 Cal. App (2) 495) to the effect that in a proceeding collateral to the criminal trial, the Court must determine whether the evidence was illegally taken from the defendant, and if it was, then it should be returned to him. Petitioner states that the Federal Court found the evidence to have been illegally obtained, and *ordered it's return to him.* Petitioner further states that this was a determination in an action

which was collateral to the offense for which Petitioner was illegally tried, and illegally convicted. Petitioner contends that the evidence should have been returned to him. Petitioner further contends that if the aforementioned evidence had been returned to him, the State of California could not have compelled Petitioner to use it against himself. Petitioner also contends that because the evidence was never [fol. 46] returned to him, *as ordered*, he was therefore, in effect deprived of his Rights against self-incrimination, and as such does pray that this Honorable Court will reverse the present illegal conviction, and grant Petitioner the succor he seeks.

Wherefore Petitioner Prays: That a. Writ of Habeas Corpus be issued to the said Warden commanding him to have your Petitioner in Court to recieve what there shall be your judgment in this matter, and wherein Petitioner prays that he be discharged from said imprisonment.

Charles Augustus Dixon, In Propria Persona S. Q.
No. A-11630.

Dated: October 19, 1950.

[fol. 47] EXHIBIT A

STATE OF CALIFORNIA,
County of Marin, ss:

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

No. 31783 L

UNITED STATES OF AMERICA, Plaintiff,

v.

CHARLES AUGUSTUS DIXON, Defendant

ORDER

Defendant is charged with unlawful possession of two film photographis negatives of a Federal Reserve Note and the execution of three copper plates in the likeness of plates designed for the printing of Government obligations.

In the morning of Friday, November 19, 1948, two officers of the San Francisco Police Department called at the apartment occupied by the defendant. They had neither a warrant for defendant's arrest nor a warrant to search the apartment. After they rang the bell thereto, defendant opened the door. He claims that the officers forced their way into the apartment. This is denied by the officers. But whether defendant invited the officers in, as they claim, or forced entrance is of no great moment. They identified themselves to the defendant and stated that they desired to question him about a party by the name of Levitt. If defendant invited them in he did so in submission to authority rather than as an intelligent and voluntary waiver of [fol. 48] his right of protection from illegal arrest or unreasonable search and seizure. Johnson v. United States, 333 U.S. 10. After questioning defendant in the kitchen for several minutes one of the officers started looking around the apartment. Defendant asked him if he had a search warrant. Thereupon defendant was handcuffed by the officers, following which a thorough search of the premise appears to have been made by one of the officers. A phone call was then made to the federal secret service agents by one of the officers. Two secret service agents, Burns and Giovannetti, came to the apartment about a half hour later in response to this call. The police officers opened the door to the apartment and admitted the agents to the apartment. The federal officers likewise had no warrant to either arrest the defendant or the search the premises. After a conversation of a few minutes between the several officers, Burns went into the room where the defendant was seated, still handcuffed, and engaged him in a conversation during which Burns asked defendant whether the latter had any objection to the secret service agents making a search. Defendant stated that he had no such objection. Following this verbal consent Burns asked defendant to sign a writing, expressly giving to them the right to make the search. This the defendant signed. Defendant also told them where most of the articles which were later seized could be found. After the search was [fol. 49] completed defendant was taken to the office of the secret service and, after further questioning and in the mid-afternoon, signed a confession, implicating himself in the charges contained in the indictment. In the afternoon

of the following Monday, November 22nd, defendant was first taken before a committing magistrate.

Defendant claims, and the police officers deny, that he was roughly treated by the officers following his inquiry about a search warrant. He also says that Burns told him that he (Burns) could get a search warrant if he did not sign the consent and that Burns further stated that "it would go easier with me if I did sign." Burns disputes this. Defendant has been previously convicted of a felony. In the face of this conflict I conclude the version given by the officers shall prevail over that of the defendant.

Defendant has moved to suppress the evidence taken from the apartment, including photographs of objects taken therein, and the confession above mentioned.

Prior to the arrest and search there was no evidence that the defendant had committed a felony so as to constitute probable cause for arresting him without a warrant. Brinegar v United States, 165 F 2d 512. It may not be said that the arrest by the police officers followed the commission of a felony in their presence. Before the arrest the officers had merely a suspicion that the defendant was engaging in counterfeiting.

[fol. 50] The original arrest was illegal. The same must be said of the searnc made by police over defendant's objection. Johnson v. United States, 333 U. S. 10. When the agents appeared upon the scene they took charge from the on because the offense in which the prior search indicated the defendant was involved were federal offenses. Undoubtedly the federal agents were informed by the police officers prior the the former's conversation with defendant of the result of their investigation. The conclusion is compelled that the federal agents became associated in the illegal search and proceeded to avail themselves of all that had gone before, including the illegal arrest and facts developed in the illegal search. Evidence obtained by the police through a wrongful search must therefore be excluded. Garibino v United States, 275 U.S. 310; United States v Brookins, 76 F Supp 374, 273 U.S. 33.

But the government contends that the defendant waived his constitutional right when he have the oral and written consents. Whether he did waive this important right freely and unders-andingly depends upon the attending circumstances. He had been overpowered, (the police officers

admit that there was a scuffle following defendant's query about a search warrant) handcuffs had been placed upon him and a search had been made. There is present coercion, both physical and psychological, He knew that incriminating evidence had been found by the officers through the [fol. 51] search. These facts negative the assertion that the consent was freely given. It is clear that coercion was still exerted when the consent was given. This and the hopelessness of his position resulting from the violation of his rights motivated the consent. A consent given under such circumstances is not the consent which the law requires to be present. A forced consent is no consent. United States v Baldocci, 42 Fed 2d 507.

It must be borne in mind that the Supreme Court has cautioned both federal officers and trial courts that a search without a warrant can be had only in exceptional circumstances. Prior to Trupiano v United States, 334 U.S. 699, it was understood that an arrest and seizure were proper when a felony is committed in the officer's view and presence. As a result of that decision a warrant may still be necessary if the delay attending the procurement of a warrant is not expected to frustrate apprehension of the wrongdoer. The protection afforded by the Fourth Amendment requires that the inferences from evidence found by officers be drawn by a neutral and detached magictrate and not by the officers. Johnson v. United States, supra.

The photographs are not property of the defendant taken during the search any more than are the mental impressions of the officers of the objects they saw or the other recordings which they may have made. The suppression of the photography as evidence fully protects defendant.

[fol. 52] So also the w-itten confession is not property illegally seized subject to return. Its admissibility as evidence may be later determined either at the trial or at a pre-trial conference. There may be circumstances bearing upon the admissibililty which were not resented at the hearing. Such circumstances may relate to the questions as to whether the delay in committing the petitioner was "unnecessary" and as to whether the confession was voluntary or involuntary. Bearing upon the problem generally attention is called to McNabb v. United States, 318 U. S. 332 and Upshaw v. United States, decided by the Supreme Court December 13, 1948.

The motion to sup-ress the seized evidence, including the photographs is granted. The evidence other than the written statement, the photographs taken by the officers and the written consent is ordered delivered to the defendant. The motion to suppress the confession is denied without prejudice.

Dated: January 1949.

Dal M. Lemmon, United States District Judge.

I, Charles Augustus Dixon, the before mentioned Petitioner do swear that the above sworn statement is a true copy of the photographic written opinion of the Honorable Dal M. Lemmon, United States District Judge, as I did receive it from the Clerk of the United States District Court.

Charles Augustus Dixon, In Propria Persona. S. Q. No. A-11630.

Subscribed and sworn to before me this 19 day of October, 1950. John Douglas Short, Notary Public in and for the County of Marin, State of California. My commission expires Sept. 3, 1954. (Seal.)

[fol. 53] *Duly sworn to by Charles Augustus Dixon. Jurat omitted in printing.*

[fol. 54] Affidavit of Service omitted in printing.

[fol. 55] IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

In re Dixon on Habeas Corpus

ORDER DENYING WRIT OF HABEAS CORPUS—Filed November 9, 1950

Crim. No. 5171

Petition for writ of habeas corpus Denied.
Carter, J. and Schauer, J. voting for issuance of a writ.

Shenk, Acting Chief Justice.

[File endorsement omitted.]

[fol. 56] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1950

No. 328, Misc.

On petition for writ of Certiorari to the Supreme Court of the State of California.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 766.

May 28, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 4

CHARLES AUGUSTUS DIXON,
Petitioner,

vs.

CLINTON T. DUFFY, Warden, San Quentin Prison

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETITIONER'S BRIEF

Franklin C. Stark,
Counsel for Petitioner.

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No. 79

CHARLES AUGUSTUS DIXON,

Petitioner,

vs.

CLINTON T. DUFFY, WARDEN, SAN QUENTIN PRISON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF OF PETITIONER

Opinion Below

Petitioner's application below for a writ of *habeas corpus* was denied without opinion and without requiring the State to answer.[1]

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[1] Prior to the filing of the petition for habeas corpus in the Supreme Court of California, petitioner had filed two petitions in the lower California courts setting forth the same grounds as were contained in the petition to the State Supreme Court. Both were denied without opinion and without requiring the State to answer. The first was denied by the Superior Court of California in and for the County of Marin, the county in which petitioner is imprisoned, on or about July 27, 1950. The second was denied by the District Court of Appeal, the intermediate appellate court for California, on or about September 12, 1950 (R. 1).

Jurisdiction

The Supreme Court of the State of California denied the petition for a writ of *habeas corpus* on November 9, 1950, two justices thereof voting for issuance of the writ (R. 33). The petition for issuance of a writ of certiorari by this Court was filed on January 13, 1951 and was granted on May 28, 1951.

The jurisdiction of this Court is invoked under the terms of 28 U. S. C. Sec. 1257(3). The federal questions sought to be reviewed were raised in the petition for a writ of *habeas corpus* in the Supreme Court of the State of California (R. 1, 24-29, 15), and that Court passed upon those questions by its denial of the petition. *Smith* v. *O'Grady*, 312 U. S. 329, 331.

A petition for a writ of *habeas corpus* is recognized in California as the proper remedy to attack collaterally a judgment of conviction which has been obtained in violation of fundamental rights under the federal constitution. *People* v. *Adamson*, 34 Cal. (2d) 320, 327, 210 P. 2d 13. The violation of fundamental constitutional rights may be reached by *habeas corpus*, although the issue might have been raised on appeal. *In re Wells*, 35 Cal. (2d) 889, 892, 221 P. 2d 947, 949; *In re Bell*, 19 Cal. (2d) 488, 493-495, 122 P. 2d 22, 25-27; *In re Byrnes*, 26 Cal. (2d) 824, 827, 161 P. 2d 376, 377; *In re Seeley*, 29 Cal. (2d) 294, 296, 298, 176 P. 2d 24, 26; *In re McVickers*, 29 Cal. (2d) 264, 273, 176 P. 2d 40, 46. See *In re Swain*, 34 Cal. (2d) 300, 302, 209 P. 2d 793, 795.

Questions Presented

1. Whether or not the Fourth Amendment prohibits the use in a state court of evidence obtained by federal officers through a search and seizure in violation of its provisions.

2. Whether or not the Fourteenth Amendment prohibits the use in a state court of evidence obtained by federal offi-

cers through a search and seizure in violation of the Fourth Amendment, where a federal court has ordered the evidence suppressed and returned to the defendant, and the federal officials in defiance of such order have delivered the evidence to state officials, who, with knowledge of the unlawful seizure and of such order, have based a conviction under a state statute, similar to the federal statute involved, upon such evidence.

Statement of the Case

The relevant facts of the case are set forth in the allegations of the petition for *habeas corpus* filed in the Supreme Court of California.[2] Under California law such allegations must be liberally construed to effect substantial justice. (Cal. Code Civ. Proc. [Deering, 1949] § 452). The petition for *habeas corpus* was denied without requiring the State to answer and without giving petitioner an opportunity to prove his allegations. The allegations thereof must accordingly be taken as true for the purpose of this review. See *Williams* v. *Kaiser*, 323 U. S. 471.

Applying the foregoing rules, it appears that in the morning of Friday, November 19, 1948, two plain-clothesmen of the San Francisco Police Department forcibly entered petitioner's home at 881 Eddy Street, San Francisco, California, and thereafter identified themselves (R. 2; 30). They had neither a warrant for petitioner's arrest nor a warrant to search his home (R. 2; 30). When petitioner inquired about a search warrant, he was pounced upon, seized, and pummeled by the officers (R. 2). He was then handcuffed, and one of the officers stood over him with a drawn re-

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[2] An opinion of a Federal District Judge (R. 29-33), later referred to, was attached as an Exhibit to the petition, and was impliedly made a part thereof. It was expressly incorporated by reference in the petition for a writ of certiorari (p. 5, lines 18-21). Some of the facts stated are taken from that opinion, appropriate record references thereto being made.

volver, orally threatening him with violence, while the other continued the search of the home (R. 2; 30).

A telephone call was then made by one of the officers from petitioner's home to the United States Secret Service. Two secret service agents, Burns and Giovannetti, came to the apartment about a half hour later in response to this call (R. 2-3; 30). They were also without warrant of any kind (R. 3; 30). They were admitted by one of the police officers and a secret conference ensued in another room from that in which petitioner was then being held (R. 2-3).

The federal officers then approached petitioner, told him he was under arrest, and asked him to sign a waiver of his legal rights against unlawful search and seizure (R. 3; 30). Prior to the arrest and search there was no evidence that defendant had committed a felony so as to constitute probable cause for arresting him without a warrant (R. 31). They told him that if he did not sign the waiver, one of them could leave and procure a warrant within a very short time, and that it "would then go harder on Petitioner, and that Petitioner's wife would also be arrested and confined to a Prison as Petitioner's conspirator" (R. 3; 31). Petitioner thereupon signed the waiver, told them where most of the articles which were later seized could be found, and the federal officers then completed the search and seized the materials which became the basis of the prosecutions to which reference will hereafter be made (R. 29-30).

Defendant was then taken by the federal officers to the office of the secret service (R. 3). He was there further threatened with the imprisonment of his wife if he did not sign a confession implicating him in the charges of photographing United States obligations and of making and possessing counterfeit plates of such obligations (R. 3). Petitioner was throughout this period in actual physical pain and a state of mental confusion. He signed the docu-

ment prepared for him without being given an opportunity to read it (R. 3). This occurred in about mid-afternoon of that same day (R. 3).

Petitioner was then taken to the San Francisco City Jail where he was booked under the charge of "enroute to the United States Secret Service" (R. 3). He was held without any formal charge, benefit of bail or legal counsel until in the afternoon of the following Monday, November 22, when he was taken before a United States Commissioner for a preliminary hearing (R. 3; 32). At that time, and upon the advice of Burns, petitioner waived a preliminary hearing (R. 3).

On about December 1, 1948, a United States Federal Grand Jury returned an indictment against petitioner, charging him with unlawful possession of two film photographic negatives of a Federal Reserve Note and the execution of three copper plates in the likeness of plates designed for the printing of Government obligations (R. 3-4; 29).

Thereafter, on about January 6, 1949, the United States District Court for the Northern District of California, through Federal District Judge Dal M. Lemmon, sustained petitioner's motion to suppress the seized evidence, and the photographs taken by the officers (R. 33). The seized evidence was ordered by the Court to be returned to petitioner (R. 33). The Court found that petitioner's consent to the search and seizure was clearly obtained by coercion and was no consent at all (R. 31-32). The motion to suppress the confession was denied without prejudice, inasmuch as its admissibility might be later determined either at the trial or at a pre-trial conference (R. 32-33).

The order of the Federal District Court suppressing the seized evidence, and requiring its return to the petitioner, was not obeyed (R. 4-5; 29).

On about January 24, 1949, the United States Attorney

filed a *nolle prosequi* in the case and petitioner was ordered released from custody (R. 4). One of the two state police officials who had initially broken into petitioner's home appeared at the county jail in San Francisco where petitioner was then being held, and upon petitioner's release, petitioner was shackled by the officer and taken to the city jail where he was re-booked and charged with violation of California Penal Code (Deering, 1949) § 480[3] (making and possessing counterfeiting dies or plates) (R. 4).

The seized evidence was not returned to petitioner, but was delivered by the federal officials directly to state officials, for use in prosecution of the state offense (R. 4; 29).

On about February 3, 1949, petitioner was indicted by the state grand jury under the state statute above referred to, upon the basis of the seized evidence presented by the District Attorney (R. 4). Thereafter, upon a plea of "not guilty", petitioner was tried in the Superior Court of the State of California in and for the City and County of San Francisco. Petitioner's motion in that court to suppress the seized evidence was denied, the court ruling in effect that the order of the federal court did not apply in the state court (R. 4-5). Petitioner was found guilty of the offense charged upon the basis of the seized evidence and the confession above referred to, and was sentenced to from one to fourteen years in the State Prison at San Quentin, California (R. 4-5). He is presently serving this sentence (R. 5).

Petitioner was ignorant of the fact that California law requires as a condition to appeal, that a notice of appeal

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[3] "§ 480. Every person who makes, or knowingly has in his possession any die, plate, or any apparatus, paper, metal, machine, or other thing whatever, made use of in counterfeiting coin current in this state, or in counterfeiting gold-dust, gold or silver bars, bullion, lumps, pieces, or nuggets, or in counterfeiting bank notes or bills, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and all such dies, plates, apparatus, paper, metal, or machine, intended for the purpose aforesaid, must be destroyed."

be filed within ten days of judgment (R. 1; Rule 31 of Rules on Criminal Appeals, Cal. Penal Code [Deering, 1949], page 917), and thereby lost his right to appeal.

The state trial was conducted with full knowledge of both the Superior Court and the District Attorney that the evidence presented had been seized by federal officials, had been ordered suppressed and returned to petitioner, and that this order had been disobeyed (R. 28-29). It may reasonably be inferred that the state trial was but a part of a plan between federal and state officials to make use of the seized evidence in order to convict petitioner of counterfeiting, irrespective of the illegal search and seizure by the federal officials, and in defiance of the order of the Federal District Court suppressing it and ordering its return to petitioner.

Specification of Errors to Be Relied On

The Supreme Court of the State of California erred:

1. In holding that the Fourth Amendment did not, and in failing to hold that it did, prohibit the use in a state court of evidence obtained by federal officers through a search and seizure in violation of its provisions.

2. In holding that the Fourteenth Amendment did not, and in failing to hold that it did, prohibit the use in a state court of evidence obtained by federal officers through a search and seizure in violation of the Fourth Amendment, where a federal court had ordered the evidence suppressed and returned to the defendant, and the federal officials in defiance of such order had delivered the evidence to state officials, who, with knowledge of the unlawful seizure and of such order, had based a conviction under a state statute, similar to the federal statute involved, upon such evidence.

3. In denying the petition for a writ of *habeas corpus*.

Argument

I. THE FOURTH AMENDMENT PROHIBITS THE USE IN A STATE COURT OF EVIDENCE OBTAINED BY FEDERAL OFFICERS THROUGH A SEARCH AND SEIZURE IN VIOLATION OF ITS PROVISIONS. PETITIONER HAS BEEN DENIED HIS CONSTITUTIONAL RIGHTS UNDER THIS AMENDMENT.

The Fourth Amendment of the Constitution of the United States provides that "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated . . . ."

It is a fundamental law, of course, that the Fourth Amendment does not apply to searches and seizures by state officers. *National Safe Deposit Co.* v. *Stead*, 232 U. S. 58. It does not follow from this, however, that the states have no duty to enforce the Fourth Amendment in those situations where federal officers, rather than state officers, unreasonably search and seize, and their conduct is called into question in state tribunals. For it is unreasonable searches and seizures by federal officers at which the constitutional guaranty is directed, and that unlawful conduct is the evil proscribed, no matter what court may be involved.

The "Constitution shall be the Supreme Law of the Land; and the judges in every State shall be bound thereby" (Art. VI, sec. 2). It follows that a state court is bound, equally with a federal court, to protect the people against violations of the Fourth Amendment by federal officials. Being so bound, the state court has the same duty that the federal court has to bar from evidence matters obtained by federal officers in violation of the Fourth Amendment. "Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution." *Mooney* v. *Holohan*, 294 U. S. 103, 113.

This Court has never had occasion to pass upon the duty of a state court to exclude evidence seized by federal officers in violation of the Fourth Amendment.

In *Weeks* v. *United States*, 232 U. S. 383, this Court held that a federal court was required to exclude evidence obtained by federal officers in a search and seizure which violated the Fourth Amendment. In *Wolf* v. *Colorado*, 338 U. S. 25, this Court held that a state court was not required to exclude evidence obtained in a search and seizure by state officers which violated the Fourteenth Amendment.

There is no sufficient reason why the reach of the Fourth Amendment should vary with the particular tribunal in which evidence is sought to be used. On the contrary, there are compelling reasons of logic and policy which dictate a holding that the character of the tribunal, that is, federal or state, is immaterial, and that the Fourth Amendment binds state and federal tribunals alike to exclude evidence seized by federal officers in violation of its command.

First, the wrong to the individual is in each instance identical. He is not complaining of a federal search and seizure in one instance, and a state search and seizure in the other. He complains of a federal search and seizure in both instances. It is the federal "knock on the door" which is the evil throughout. The individual has a right, grounded on the Fourth Amendment, to be free from all unreasonable searches and seizures by federal officers. This right demands a uniform remedy, else "desirable uniformity in adjudication of federally created rights could not be achieved." *Brown* v. *Western Railway of Alabama*, 338 U. S. 294, 299. What has been elsewhere said concerning "federally-created rights", and, conversely of "state-created rights," is by analogy equally applicable here. *Clearfield Trust Co.* v. *United States*, 318 U. S. 363, 367; *Guaranty Trust Co.* v. *York*, 326 U. S. 99; *Erie R. Co.* v. *Tompkins*, 304 U. S. 64.

Second, the Fourth Amendment should be liberally construed to prevent the impairment of the protection extended. *Grau* v. *United States*, 287 U. S. 124, 128; *Gouled* v. *United States*, 255 U. S. 298, 304. A construction of that Amendment which does not restrain in all courts the use of evidence secured by federal officers in violation of its mandate is a strict construction. It is not the liberal construction required by the decided cases to secure the fundamental liberties there protected.

> "A close and literal construction deprives them of half their efficacy and leads to gradual depreciation of the right, as if it consisted more in sound than in substance." *Boyd* v. *United States*, 116 U. S. 616, 635.

Third, violations of the Fourth Amendment can be effectively prevented only by barring from evidence those matters secured by federal officers through its violation. Such was the holding in the *Weeks* case:

> "If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution." 232 U. S. 383, 393.

This ruling in the *Weeks* case was not "derived from the explicit requirements of the Fourth Amendment; . . . [but] was a matter of judicial implication. Since then it has been frequently applied and we stoutly adhere to it." *Wolf* v. *Colorado*, 338 U. S. 25, 28. It was not the desire to protect anyone from a federal prosecution which prompted this judicial implication in *Weeks*. Its roots were rather in the recognition of a need for a militant remedy to protect the people against unreasonable searches and seizures by federal officers. Such searches and seizures are no less

federal because the fruits thereof are offered in a state prosecution. The remedy required to right the wrong is accordingly implied without regard to the character of the prosecution, and with regard only to the constitutional right involved.

The rule of exclusion, while a matter of judicial implication, is nonetheless inherent in the Fourth Amendment itself. It thus rests on a constitutional footing. As stated in *Wolf*, "we have interpreted the Fourth Amendment to forbid the admission of such evidence . . ." 338 U. S. 25, 33. Surely a constitutional remedy cannot be so fickle as to vary with the forum.

Fourth, a failure to recognize that the fruits of an unlawful search and seizure by federal officers can no more be used in state than in federal courts must inevitably lead to artifices and shams whereby those federal officers who violate the Fourth Amendment may indirectly use such fruits via the medium of a state court. The facts of the instant case illustrate one such instance, and speak for themselves of the lawlessness and contempt for right which are bred thereby. Here a federal court had branded the search and seizure by federal officers as unlawful, and had ordered the suppression and return of the evidence seized. Instead of complying with the order, the federal officials in direct contempt thereof delivered the evidence to state officials for use in a prosecution under a state counterpart of the federal law involved. With full knowledge of the character of the search and seizure and of the order of suppression and return, the state officials have received the evidence and used it as the basis for a conviction in the state court.

This Court has universally condemned all schemes and artifices by which federal officials have sought by indirection to accomplish what *Weeks* prevented their doing di-

rectly. *Silverthorne Lumber Co.* v. *United States*, 251 U. S. 385; *Gambino* v. *United States*, 275 U. S. 310; *Nardone* v. *United States*, 308 U. S. 338. No different result should be permitted where, as here, federal officials schemed to obtain a conviction, upon the basis of suppressed evidence, under a state counterfeiting statute, after their prosecution under the federal counterfeiting law had soured by reason of their lawless conduct.

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court, but that it shall not be used at all." *Silverthorne Lumber Co.* v. *United States*, 251 U. S. at 392.
>
> "It is true that the troopers were not shown to have acted under the direction of the Federal officials in making the arrest and seizure. But the rights guaranteed by the 4th and 5th Amendments may be invaded as effectively by such co-operation, as by the state officers acting under direction of the Federal officials." *Gambino* v. *United States*, 275 U. S. at 316.
>
> "To forbid the direct use of methods thus characterized but to put no curb on their full indirect use would only invite the very methods deemed 'inconsistent with ethical standards and destructive of personal liberty.'" *Nardone* v. *United States*, 308 U. S. at 340.

While the question here presented has never been determined in this Court, it has been decided by the highest courts of several States. In *State* v. *Rebasti*, 306 Mo. 336, 267 S. W. 858, the problem was before the Supreme Court of Missouri. There the state officers, after arresting the defendant, turned the matter over to federal narcotic officers who caused the search of a safety deposit box in violation of the Fourth Amendment. In a prosecution in the state court, evidence based on the fruits of the search

was used by the prosecution. The conviction thus obtained was reversed, and the cause remanded, the Court saying:

"The restriction of the Fourth and Fifth Amendments to the federal Constitution apply only to federal officers. The like restrictions in the state Constitution apply only to state officers. When a case arises in a federal court, and a state officer, as a witness, is asked to give evidence discovered by him in an unreasonable search, and the provisions of the federal Constitution are invoked in objection to his testimony, the court always holds that he may testify, because the restrictions of the federal Constitution do not apply to him.

"Likewise, in a state court, when a federal official is offered as a witness, and is asked to testify to some facts which he discovered by an unreasonable search, and the state Constitution is cited in objection, his evidence is held competent because the restrictions of the state Constitution do not apply to him. But when a federal officer is offered as a witness in a state court, and his evidence is objected to because discovered in violation of the federal Constitution, no case is cited where it is held admissible.

"Such constitutional restrictions of federal officers and state officers always apply wherever they are called in question. Suppose a federal officer should make an unreasonable search, and, in doing so, outrage the citizen's rights under the United States Constitution. Can it be said that the unlawful act of the officer could become lawful because of the court in which it is questioned? Suppose the injured citizen should sue him in the state court for damage done in violation of his constitutional rights, and the officer, in defense, should plead that, although he acted unlawfully, the plaintiff had no right to prove it in a state court. Does anyone suppose the plea would be good?

"In this case the federal officer violated the constitutional rights of the defendant, and violated the constitutional restrictions upon his own behavior as a federal officer. Had the case been pending in the federal court, he could not have testified, because his act in procuring his information was unlawful. His case, however, is pending in the state court, and it is contended that he may testify because his act was lawful. By that theory his act becames lawful or unlawful, not because of its quality, but because of the court which decides the question. He can bring his misdemeanor to a state court, and there have his lawless disregard of his official duty appraised as a meritorious performance.

"Numerous cases are cited in support of the opposite view, where it is said that the amendments to the federal Constitution are intended to limit the powers of the national government alone, and do not affect the powers of the state governments. This is construed by the prosecution to mean that the restrictions of the national government do not affect state courts. But the cases cited do not so hold. Where the opinions in such cases hold that the Fourth and Fifth Amendments to the federal Constitution operate upon the federal government only, and not upon the state government, they mean, of course, the agents of the federal government. If those amendments are intended to restrain the actions of federal officers, why should it ever be held that under certain conditions they do not restrain them?

"The case of People v. Adams, 176 N. Y. loc. cit. 356, 68 N. E. 636, 63 L. R. A. 406, 98 Am. St. Rep. 675, is cited, where it is said that the Fourth and Fifth Amendments to the Constitution of the United States do not apply to actions in the state courts. That statement is purely obiter. The facts in the case do not warrant any such statement of the law. In no case has it ever been held, so far as I can dis-

cover, that the unlawful act of a federal officer becomes lawful when brought into question in a state court, or that the evidence of a federal official, which would be held incompetent in the federal court on account of the restrictions of the Fourth and Fifth Amendments, becomes competent when offered in a state court.

* * * * * * * * *

"The only safe and sound construction of the situation is to say that when a federal officer violates the constitutional restriction upon his conduct, so as to make evidence procured in such violation incompetent, that it is incompetent everywhere offered." *State* v. *Rebasti*, 306 Mo. 336, 267 S. W. 858, 861-862.

Accord:[4]

Walters v. *Commonwealth*, 199 Ky. 182, 250 S. W. 839;
State v. *Arregui*, 44 Idaho 43, 254 P. 788;
State v. *Hiteshew*, 42 Wyo. 147, 292 P. 2;
See also, *Little* v. *State*, 171 Miss. 818, 159 So. 103.

The case now before this Court is an even stronger case than the *Rebasti* case. Here there was not only a violation of the Fourth Amendment by federal officers, but a violation of a federal court order as well, an order designed to implement the constitutional safeguard and to give to the defendant the very protection the Court in *Weeks* held to be the constitutional command. It is no answer to say, as does respondent in his opposition to the petition for cert (Resp. Br., p. 3), that the state court and its officials were not a

[4] Compare *Terrano* v. *State*, 59 Nev. 247, 91 P. 2d 67; *Gaines* v. *State*, 95 Tex. Cr. R. 368, 251 S. W. 245, 248, pet. for cert. dis. by stip. 263 U. S. 728; *State* v. *Gardner*, 77 Mont. 8, 249 P. 574; *Johnson* v. *State*, 155 Tenn. 628, 299 S. W. 800. See also, *People* v. *Harmon*, 89 C.A. (2d) 55, 200 P. (2d) 32, and *Benson* v. *State*, 149 Ark. 633, 233 S. W. 758, where the problem was present but not discussed.

party to the federal court proceeding. The aid and assistance given by them to the federal officials in the violation of the federal court's order was as much a punishable contempt as was the disobedience of the federal officials themselves. Cf. *In re Lemmon*, 166 U. S. 548; *Seaward* v. *Peterson*, 1 L. R. Ch. Div. (1897) 545.

II. THE FOURTEENTH AMENDMENT PROHIBITS THE USE IN A STATE COURT OF EVIDENCE OBTAINED BY FEDERAL OFFICERS THROUGH A SEARCH AND SEIZURE IN VIOLATION OF THE FOURTH AMENDMENT, UNDER THE CIRCUMSTANCES HERE PRESENTED.

The minimal standards assured by the due process clause are not met by the use in a state prosecution of evidence obtained by federal officers in violation of the Fourth Amendment, and by them delivered to state officials who have knowledge of the unlawful search and seizure involved and of a federal court order suppressing the evidence and ordering its return to petitioner.

This is not a situation in which state officers, acting alone, have violated petitioner's privacy against arbitrary intrusion, so that the state may remand him "to the remedies of private action and such protection as the internal discipline of the police, under the eyes of an alert public opinion, may afford." *Wolf* v. *Colorado*, 338 U. S. 25, 31.

This is a situation in which federal officers are guilty of intrusion into petitioner's home and seizure of his effects. Against them, the state affords petitioner no adequate or effective remedy, and a prohibition against the use of the evidence is required to afford him due process. Cf. *Moore* v. *Dempsey*, 261 U. S. 86. "There are, moreover, reasons for excluding evidence unreasonably obtained by the federal police which are less compelling in the case of police under state or local authority. The public opinion of a community can far more effectively be exerted against

oppressive conduct on the part of police directly responsible to the community itself than can local opinion, sporadically aroused, be brought to bear upon remote authority pervasively exerted throughout the country." *Wolf* v. *Colorado*, 338 U. S. 25, 32-33.

Not having afforded petitioner an adequate or effective remedy, the state has not provided petitioner with that which is "implicit in the concept of ordered liberty," and accordingly has denied him due process of law. *Palko* v. *Connecticut*, 302 U. S. 319, 325.

Conclusion

For the foregoing reasons, the denial of petitioner's application for a writ of *habeas corpus* should be set aside, and the Court below should be directed to issue the writ.

Respectfully submitted,

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(7304)

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1951

No. 4

CHARLES AUGUSTUS DIXON,
Petitioner,

vs.

CLINTON T. DUFFY, Warden,
San Quentin Prison,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of California.

BRIEF FOR RESPONDENT.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1951

No. 79

CHARLES AUGUSTUS DIXON,
Petitioner,

vs.

CLINTON T. DUFFY, Warden,
San Quentin Prison,
Respondent.

On Writ of Certiorari to the Supreme Court of the State of California.

BRIEF FOR RESPONDENT.

OPINION BELOW.

Petitioner's application for a writ of habeas corpus was denied without opinion and without requiring the respondent to answer.

JURISDICTION.

The jurisdiction of this Court was invoked by petitioner under the terms of 28 U.S.C., Section 1257(3).

The federal questions sought to be reviewed were raised in the California Supreme Court in a collateral attack upon a final judgment of a *nisi prius* Court, no appeal having been taken from said judgment to the Appellate Courts of California.

We challenge the jurisdiction of this Court.

There is and can be no showing that the Supreme Court of California passed upon the federal question sought to be raised in the California Courts and now presented here.

In California a convicted defendant who has not appealed from a judgment of conviction is not entitled as a matter of right to attack a judgment collaterally on matters appearing in the record and which were available to him on appeal.

In California a writ of habeas corpus cannot be used as a substitute for an appeal.

This subject will be developed in the argument to follow.

QUESTIONS PRESENTED.

1. Does the Supreme Court of the United States have jurisdiction of this proceeding, it not appearing that the State Court passed upon a federal question

when it denied petitioner's application for a writ of habeas corpus?

And if the jurisdictional problem is surmounted:

2. Whether or not California has penal jurisdiction over the offense commonly referred to as counterfeiting.

3. Whether or not a ruling excluding evidence in a Federal Court is controlling in another cause pending in a State Court.

4. Whether or not California adequately recognizes the right of its citizens to be protected from unreasonable search and seizures.

STATEMENT OF THE CASE.

On October 21, 1950, Charles Augustus Dixon filed in the Supreme Court of the State of California an application for a writ of habeas corpus alleging in substance that as a result of an illegal search and seizure evidence was secured and a confession obtained which were used to convict him in a criminal action instituted against him in the Superior Court of the State of California in and for the City and County of San Francisco for the crime of making or passing counterfeit dies or plates (Sec. 480, Penal Code of Calif.).

On November 9, 1950 the California Supreme Court denied the petition for habeas corpus, two of the justices voting for the issuance of the writ.

A petition for a rehearing was not addressed to the California Court.

On January 13, 1951 certiorari was requested of this Court and on May 28, 1951 the request was granted.

Petitioner failed to prosecute an appeal to the state Appeliate Courts from the judgment which he later attacks collaterally by habeas corpus, the denial of which he now seeks to review (R. 1).

STATEMENT OF FACTS.

(Note: The facts hereinafter recited are gleaned from the petition for the writ of habeas corpus filed in the California Supreme Court which appears in the record here. Respondent denies the accuracy of petitioner's recitals and is prepared to submit to this Court a certified copy of the record of the evidence taken before the trial Court which record, however, has never been submitted to the California Supreme Court and consequently is not in the printed record before this Court.)

1. The facts disclosed by the petition for habeas corpus.

On November 19, 1948, two individuals who were later identified as police officers of the City and County of San Francisco and without petitioner's consent or a search warrant and over petitioner's strenuous objection proceeded to search his apart-

ment. Petitioner's objections were overcome by force, the use of handcuffs and a show of firearms (R. 2).

The officers had neither a warrant for petitioner's arrest nor did they have a search warrant (R. 2).

The police officers phoned to officers of the United States Secret Service who then joined the police officers.

The Secret Service Agents after conference with the police officers advised petitioner that he was under arrest (R. 3). Petitioner was asked to sign a waiver of his right to object to an illegal search and seizure and was advised if he did not do so the officers would leave and in a short time would procure a search warrant and petitioner's wife would be arrested and things "would then go harder" with him (R. 3).

Petitioner signed the proposed waiver and his apartment was searched (R. 3).

The Secret Service Agents accompanied by the police officers then took petitioner to the office of the Secret Service. He was again threatened that his wife would be prosecuted if he did not sign a confession and being in pain and suffering he did sign a confession and waive a preliminary hearing (R. 3) but that the confession was not his voluntary act (R. 11). The petitioner states that prior to giving his confession he was beaten by the police officers (R. 11).

Petitioner was later charged by an indictment filed in the United States District Court for the Northern

District of California with violations of the federal counterfeiting laws. Petitioner was represented by counsel who successfully moved to suppress the evidence obtained as a result of the search of the petitioner's apartment (R. 4) and the United States Attorney dismissed the indictment. The opinion of the judge suppressing the evidence is attached to and made a part of the petition for habeas corpus as an exhibit (R. 29-33).

Thereafter petitioner was taken into custody by San Francisco police officers and charged with a violation of the California laws denouncing counterfeiting. The evidence before the State grand jury consisted in part of the material ordered suppressed in the federal proceeding. An indictment was returned to the Superior Court of the State of California in and for the City and County of San Francisco accusing petitioner of the crime of felony, to wit, a violation of sec. 480 of the Penal Code of California (counterfeiting) (R. 4), and two prior felony convictions.

Again petitioner was represented by counsel who prior to trial moved to suppress the evidence which had been seized at his apartment, the motion was denied, and the evidence was used at the trial. Thereafter, on March 31, 1949, and after a trial before a jury, he was found guilty as charged and is now in prison pursuant to the judgment of the State Court (R. 4, 5).

Petitioner did not appeal and states that he did not know that he had but eleven days in which to perfect his appeal (R. 1).

On October 21, 1950, petitioner applied to the California Supreme Court for habeas corpus which was denied without opinion on November 9, 1950, which denial is now here on certiorari.

2. The facts as disclosed by the opinion order of the United States District Court suppressing the evidence.

The order of the United States District Court suppressing the evidence states facts which are in some respects different from those stated by the petitioner in his petition and that Court stated that in view of the fact that petitioner had been previously convicted of a felony he concluded that the version of the officers should prevail over that of petitioner (R. 31). For this reason we here narrate some of the facts gleaned from the order referred to.

On the morning in question the police officers rang the bell of petitioner's apartment. He opened the door and they went in. The officers identified themselves and stated that they wished to question the petitioner about a party by the name of Levitt. After questioning the defendant for several minutes one of the officers looked around the apartment. Petitioner demanded a search warrant. He was handcuffed and the search proceeded. Petitioner stated he was roughly treated and this was denied by the officers. The Court accepted the officers' version (R. 31).

Thereafter the federal officers were called, the search continued and petitioner and the evidence were turned over to the federal officers.

It may be well to note at this point that petitioner does not describe the property seized by the officers. However, if speculation is proper, we may surmise from the nature of the offense charged and the initial recital in the order of the District Court that the following items were seized, to wit, two film photographic negatives of a Federal Reserve note, three copper plates in the likeness of plates designed for the printing of Government obligations (R. 29), and photographic equipment (R. 4).

Not only was the evidence ordered suppressed by the Federal Court but the contraband material was ordered returned to petitioner.

3. The facts as shown at the trial in the State Court.

The evidence taken at the trial which resulted in the judgment here under attack is recorded in a 255-page transcript, an authenticated copy of which is available for the Court and petitioner if it will be of assistance to either.

SUMMARY OF THE ARGUMENT.

1. It not appearing that the State Court passed upon a federal question when it denied petitioner's application for a writ of habeas corpus, this Court cannot review the State Court's action by certiorari.

   (a) In California a collateral attack on the final judgment of a nisi prius Court by way of habeas corpus cannot be used as a substitute for an appeal.

   (b) The petition for the writ of habeas corpus was insufficient under California law.

2. Petitioner having failed to avail himself of his right to correct the alleged error committed by the California Court by the way of appeal can not use a habeas corpus proceeding as a writ of error.

3. A State as well as the Federal government may denounce the counterfeiting of Federal obligations.

4. A ruling by a Federal nisi prius Court excluding evidence is not controlling in another cause pending in a State Court.

5. Although California rejects the doctrine of the Week's case nevertheless the right of the citizen to be immune from unreasonable searches and seizures is recognized and adequately protected by the laws of the State.

ARGUMENT.

1. IT NOT APPEARING THAT THE STATE COURT PASSED UPON A FEDERAL QUESTION WHEN IT DENIED PETITIONER'S APPLICATION FOR A WRIT OF HABEAS CORPUS, THIS COURT CANNOT REVIEW THE STATE COURT'S ACTION BY CERTIORARI.

(a) In California a collateral attack on the final judgment of a nisi prius Court by way of habeas corpus cannot be used as a substitute for an appeal.

The basic rule in California governing the issuance of a writ of habeas corpus is that the writ may not be used to correct error which might have been corrected on appeal (*In re Trombley*, 31 Cal. (2d) 801; *In re Lindley*, 29 Cal. (2d) 709; *In re Porterfield*, 28 Cal. (2d) 91; *In re Byrnes*, 26 Cal. (2d) 824).

In California as well as in the Federal Courts a discharge of a prisoner confined under a judgment of conviction, is granted only in the exercise of a sound judicial discretion. The remedy is an extraordinary one, out of the usual course, and involves a collateral attack on the process of judgment constituting the basis of the detention. The instances in which it is granted, when the law has provided another remedy in regular course, are exceptional, and usually confined to situations where there is peculiar and pressing need for it, or when the proceeding or judgment under which the prisoner is held is wholly void (*Goto v. Lane*, 265 U.S. 393, 68 L. Ed. 1070).

The California Courts follow the rule of the Federal Courts as announced in *Goto v. Lane*, supra, and held in *In re Bell*, 19 Cal. (2d) 488, that since the

granting of a writ of habeas corpus results in the release of the petitioner, while reversal on appeal may result merely in a new trial with the exclusion of those charges found based on unconstitutional enactments or the inclusion of that procedure found constitutionally guaranteed, the California Courts may in their discretion refuse to grant the writ if the remedy by appeal is not exhausted. In *Wade v. Mayo*, 334 U.S. 672, 92 L. Ed. 1647 this Court pointed out that in a case in which the failure of the State Court to specify the reason for the dismissal of a petition for habeas corpus made it possible to construe the action as a holding that a direct appeal from the conviction was the only remedy available and in such event no federal question was available for review by this Court.

The reasoning back of this rule is obvious and applicable here.

The record of the trial in the *nisi prius* Court would reveal the substantiality of petitioner's claim and on appeal the Appellate Court would be in a position to adequately appraise its merit.

Consider the possibilities in the instant case:

Suppose for the purposes of argument the *nisi prius* record should disclose: that the police officers had official information that a felony warrant was outstanding for the arrest of Levitt; that he resided with Dixon in the apartment in question; that the officers went to the apartment to apprehend Levitt; that they rang the bell to the apartment and Dixon

opened the door; that the officers thereupon entered and questioned Dixon about the whereabouts of Levitt; that Dixon advised them that although he and Levitt were friends and associates, nevertheless Levitt did not live in the apartment; that during this legitimate conversation one of the officers had a roving eye and observed in one of the rooms an arrangement of photographic equipment with a ten dollar Federal Reserve note before the camera; that he then questioned Dixon about the equipment whereupon Dixon demanded a search warrant; and, that then the officer arrested and handcuffed Dixon, seized the equipment, together with counterfeit plates and bills.

These facts are all possible and even probable in view of the facts stated in the habeas corpus petition and the facts stated in the order of the District Court.

If these facts appeared in a record on appeal the Appellate Court would have no difficulty in concluding that the presence of the officers in Dixon's apartment was proper, that by the use of their senses the officers had probable cause to believe that the offense of counterfeiting was taking place in their presence and that the consequent arrest was proper and the search was an incident thereof (*Penal Code of California*, sec. 836; *Orfield, Crim. Pro. Arrest to Appeal*, p. 14, et seq.; *Restatement Torts*, sec. 206; *American Law Institute, Code of Criminal Procedure*, sec. 21; *Brinegar v. U. S.*, 338 U.S. 160; 93 L. Ed. 1879).

We submit that a Court is not compelled to accept the oath of a thrice convicted felon as against the presumption of official duty properly performed, especially when the thrice convicted felon neglected to take the one step which would have placed the actual facts before the Court.

We are not unmindful of the fact that California Courts will in exceptional cases entertain a petition for habeas corpus which is in effect a collateral attack on a judgment of conviction. Petitioner has cited the following cases: *People v. Adamson*, 34 Cal. (2d) 320; *In re Wells*, 35 Cal. (2d) 889; *In re Bell*, 19 Cal. (2d) 488; *In re Byrnes*, 26 Cal. (2d) 824; *In re Seeley*, 29 Cal. (2d) 294 and *In re McVickers*, 29 Cal. (2d) 264. In each of these cases the California Court recognized that the particular case was an exception to the general rule and that its action was the exercise of a judicial discretion.

All that the *Adamson* case (34 Cal. (2d) 320) decided is that habeas corpus rather than *coram nobis* is the appropriate remedy to attack a judgment obtained in violation of fundamental constitutional rights, for instance, a judgment obtained by false testimony knowingly used. In the *Wells* case (35 Cal. (2d) 889) the attack was on the constitutionality of a statute and rulings on the evidence. This case (*Wells*) had already been fully considered on an appeal from the judgment (*Peo. v. Wells*, 33 Cal. (2d) 330) and the Court based its denial on matters appearing in record on that appeal. At best the

Wells case cited by counsel was an answer by the California Supreme Court to the decision of the United States District Court which had entertained a petition for a writ of habeas corpus. The *Bell* case (19 Cal. (2d) 488) has already been considered by us. It is only authority for the proposition that in exceptional cases the California Courts will entertain a collateral attack on a judgment by way of habeas corpus. The *Byrnes* case (26 Cal. (2d) 824) follows the general rule for which we are contending. The *McVickers* case (29 Cal. (2d) 264) and the *Seeley* case (29 Cal. (2d) 294) also follow the general rule that a collateral attack on a judgment by habeas corpus will not lie. In these cases the California Supreme Court entertained the petitions on the theory that the length of sentence was under attack rather than the judgments.

It is interesting to note that the exceptions to the general rule are generally cases in which the petitioner is relying on matters outside the record; cases involving perjured testimony; cases in which a plea was obtained by duress, etc. No case has been cited where the issue of lack of due process involved rulings on the admission of evidence where a full opportunity was given by the trial Court to explore the matter and the appellate process was available for the correction of error but was not used.

(b) The petition for the writ of habeas corpus was insufficient under California law.

The California Court may well have refused to entertain petitioner's application for habeas corpus because of the insufficiency of the petition as a pleading. That Court has gone to some pains to outline the rules which are to guide a petitioner (*In re Swain*, 34 Cal. (2d) 300). In the *Swain* case just referred to the petitioner was a convict without counsel. Although the petitioner here drew his own petition he did have counsel both in the federal and State Courts who adequately represented him.

Although petitioner described at great length the facts surrounding the search and seizure complained of he nowhere alleges that these matters were presented to the California trial Court. He alleges that "he did enter a motion, similar to the preceding action in the United States District Court" (R. 4) and that the evidence sought to be suppressed was the same as that suppressed by the Federal Court. But the showing before the Federal trial Court is not disclosed here nor was it disclosed to the California Court. Neither does the petitioner show what testimony was offered in the State Court in opposition to his motion. Perhaps he relied upon some theory of *res judicata*. But there is no showing that the local officials or the State were ever parties to the Federal proceeding.

The petition of habeas corpus was obviously defective when measured by the *Swain* case. This does not present a Federal question.

2. **PETITIONER HAVING FAILED TO AVAIL HIMSELF OF HIS RIGHT TO CORRECT THE ALLEGED ERROR COMMITTED BY THIS CALIFORNIA COURT BY THE WAY OF APPEAL CANNOT USE A HABEAS CORPUS PROCEEDING AS A WRIT OF ERROR.**

If petitioner's complaint has any merit at all, it is this: The California Court received in evidence matter which was obtained as a result of an illegal search and seizure.

If this was error, it should have been called to the attention of the California Court in the orderly manner provided by law, i.e., an appeal, and if the California Court persisted in its error and a Federal question was involved, the final judgment could have been reviewed by this Court on certiorari.

Petitioner did not use this orderly process.

If an order made under Rule 41(e) Federal Rules of Criminal Procedure is to have any effect on a State Court it must be as a rule of evidence. The erroneous admission of illegally obtained evidence in a criminal case must be urged on appeal and thereafter by petition for writ of certiorari and may not be urged on habeas corpus or other proceeding collaterally attacking the judgment, since the erroneous admission of such evidence does not divest the Court of jurisdiction. *Price v. Johnston* (1942), 125 Fed. (2d) 806 (cert. denied 316 U.S. 677, 86 L. Ed. 1750, 62 S. Ct. 1106); *Bozel v. Hudspeth* (1942), 126 Fed. (2d) 585.

3. A STATE AS WELL AS THE FEDERAL GOVERNMENT MAY DENOUNCE THE COUNTERFEITING OF FEDERAL OBLIGATIONS.

California forbids and punishes the several offenses generally found under the heading of counterfeiting (sec. 473, et seq. and 648 of the Penal Code of California) as does the Federal Government.

Sustaining the jurisdiction of a State to punish counterfeiting, see: 7 *Cal. Jur.* 375; 14 *Am. Jur.* 175.

The Federal and State jurisdictions are concurrent; the Federal Government may punish counterfeiting in the interest of protecting its currency, while the State may do so in the interest of protecting its citizens from fraud.

A note at 16 A.L.R. 1234 lists the authorities for the general proposition that concurrent criminal jurisdiction exists in many situations. In such situations acquittal in one jurisdiction does not preclude prosecution in the other.

People v. Grosofsky, 73 Cal. App. (2d) 15, 165 P. (2d) 157, is an analogous case, involving state prosecution for counterfeiting of gasoline coupons.

The following cases are all directly in point—they hold that there is concurrent jurisdiction over counterfeiting:

U. S. v. Arizona, 120 U.S. 479, 30 L.Ed. 728;
Fox v. Ohio, 46 U.S. (5 How.) 410, 12 L. Ed. 213;
People v. McDonnell, 80 Cal. 285, 22 Pac. 190;
People v. White, 34 Cal. 183.

4. **A RULING BY A FEDERAL NISI PRIUS COURT EXCLUDING EVIDENCE IS NOT CONTROLLING IN A STATE COURT.**

The Federal rule excluding illegally obtained evidence was first announced in *Weeks v. U. S.* (1914), 232 U.S. 383, 58 L. Ed. 652, 34 S. Ct. 341. Every application of the Weeks doctrine obviously involves determination of an issue which is only collateral to the question of the accused's guilt. Before the trial began, Weeks had petitioned the Court for suppression of the illegally obtained evidence. The Supreme Court approved this procedure, recognizing the injection of this collateral issue into trials would cause confusion and delay. The Supreme Court later expressly recommended use of a similar procedure for determination of the admissibility of evidence obtained by wire-tapping (*Nardone v. U. S.*, 308 U.S. 338, 341, 60 S. Ct. 266, 84 L. Ed. 307). This suggestion has been adopted by the District Courts (*United States v. Lewis* (1950), 87 Fed. Supp. 970).

Sections 15 and 16 of Title XI of the Espionage Act of 1917 (40 Stats. 217, 18 U.S.C. Secs. 625, 626) gave legislative sanction to pre-trial determination, by either a judge or a United States Commissioner, of the legality of a seizure. The purpose of allowing the commissioner to entertain the motion was to enable the accused to prevent the commissioner from admitting the evidence in the preliminary hearing. *U. S. v. Napelo* (1928), 28 Fed. (2d) 898. His determination was not binding on the Court (*Hexter v. U. S.* (1929), 33 Fed. (2d) 402). The Commissioner was ousted of his jurisdiction to suppress evidence

once an indictment was filed (*U. S. v. McKay* (1924), 2 Fed. (2d) 257). All of the above indicates that the special proceeding was intended to implement a federal rule of evidence—*not to force that rule upon the State Courts.*

In providing that if the motion is granted the property "shall not be admissible at any hearing or trial", Rule 41(e) Federal Rules of Criminal Procedure does not specifically exempt State Courts. It is nevertheless clear that such an exemption was intended. From its origin, the procedure now set out in Rule 41(e) had one objective—to enable the doctrine of the *Weeks* case to be applied in the Federal Courts without interrupting the orderly conduct of criminal trials.

The true purpose and scope of the proceeding is indicated by the opinion in *Foley v. U. S.* (1933), 64 Fed. (2d) 1, 3:

> "Though no indictment be pending, the court may reach forward to control the improper preparation of evidence which is to be used in a case coming before it, and can always restrain oppressive or unlawful conduct of its own officers."

We have found no judicial language indicating that a Federal Court's order suppressing evidence binds any but the Federal Courts. In *Cogen v. U. S.* (1929), 278 U.S. 221, 73 L. Ed. 282, 49 S. Ct. 120, the Supreme Court held that when an order suppressing evidence is made after the indictment has been filed (as it was in Petitioner's case) it is not an independ-

ent proceeding. The order is interlocutory and therefore not appealable. See also *Coastwise Lumber and Supply Co. v. U. S.* (1919), 259 Fed. 847.

How could the State of California be bound by an interlocutory non-appealable order, made in a proceeding to which the State cannot be a party?

If petitioner's contention is valid, it would mean that any time illegally obtained evidence would support conviction of both a Federal and a State offense (even though the offenses be quite unrelated) the accused could force the State Court to adopt the Weeks doctrine by moving the Federal Court to suppress the evidence.

The Federal Rules were adopted under statutory authority expressly limited to the establishment of rules for Federal Courts and Commissioners. Petitioner's argument implies that these rules should have the startling effect of overruling *Wolf v. Colorado* and the important principle of intergovernmental relations for which it stands.

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5. **ALTHOUGH CALIFORNIA REJECTS THE DOCTRINE OF THE WEEKS CASE, NEVERTHELESS THE RIGHT OF THE CITIZEN TO BE IMMUNE FROM UNREASONABLE SEARCHES AND SEIZURES IS RECOGNIZED AND ADEQUATELY PROTECTED BY THE LAWS OF THE STATE.**

The 4th and 5th Amendments to the United States Constitution are the law of the land. California accepts these amendments as binding and acknowledges

that its citizens are entitled to have these guarantees adequately protected by the laws of California.

In securing these guarantees to citizens the Federal government has since 1914 by virtue of the *Weeks* case, 232 U.S. 383, 58 L. Ed. 652, secured these rights to citizens by forbidding the introduction into evidence in Federal Courts of material obtained as a result of an illegal search and seizure.

California has consistently refused to follow the *Weeks* case.

From *People v. Mayen,* 188 Cal. 237 to *People v. Gonzales,* 20 Cal. (2d) 166, and now *People v. Rochin,* 101 Cal. App. (2d) 140 (cert. granted) the California Courts have admitted in evidence material obtained as a result of illegal search.

Not only have the California Courts rejected the *Weeks* doctrine but the California Legislature has joined in that rejection. Mr. Justice Carter in his dissenting opinion in the *Rochin* case (101 Cal. App. (2d), at page 144) emphatically announced: "I am asking the Legislature of California to enact legislation which force the courts of this state to uphold the constitutional provisions (U. S. Const. 4th Amendment, California Constitution, Art. I, sec. 19) guaranteeing the right of privacy to residents of this state."

Mr. Justice Carter asked and the Legislature rejected the request.

Three bills[1] were introduced in the 1951 Legislature which would have in effect made the rule in the *Weeks* case the rule in California. None of the bills were enacted into law.

This Court in *Wolf v. Colorado*, 338 U.S. 25, 93 L. Ed. 1783, after a full review of the entire subject held that although the guarantees of the 4th and 5th Amendments were binding on the states the failure on the part of a state to implement these amendments by the adoption of the rule in the *Weeks* case did not constitute a deprivation of due process.

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[1] *Senate Bill 1689.*

"An act to add Section 1873 to the Code of Civil Procedure, relating to evidence.

The People of the State of California do enact as follows:

Section 1. Section 1873 is added to the Code of Civil Procedure to read:

1873. No evidence obtained in violation of Section 19, of Article I of the Constitution or any law of this State shall ever be introduced or admitted or used for any purpose whatsoever in any court of this State."

Assembly Bill 3120.

"An act to add Section 1102.5 to the Penal Code, relating to evidence.

The People of the State of California do enact as follows:

Section 1. Section 1102.5 is added to the Penal Code, to read:

1102.5. No evidence obtained in violation of Section 19 of Article I of the Constitution or any law of the State of California shall ever be introduced or admitted or used for any purpose whatsoever in any court of this state."

Assembly Bill 1493.

"An act to add Section 1045 to the Penal Code, relating to evidence in criminal proceedings.

The People of the State of California do enact as follows:

Section 1. Section 1045 is added to the Penal Code, to read:

1045. No evidence shall be admitted against the defendant in any criminal proceeding which has been obtained in a manner prohibited by law."

The reason underlying the difference between the Federal rule as expressed in the *Weeks* case and the State rule as allowed in the *Wolf* case finds its basis in history.

The early common law did not recognize search warrants, but they crept into the law, as it is said, by "imperceptible degrees" for the purpose of searching for stolen goods. With the growth of the inquisitorial procedure of the Star Chamber there grew up, however, a practice of allowing the secretary of state to issue general warrants for the search of libels. The power was expressly conferred by the licensing acts, but it survived their expiration. The issue of searches and seizures came to a head in the 1760's when John Wilkes and certain others were arrested for seditious libel. Out of these proceedings two important rules of law emerged. The first concerned the validity of general warrants; the second the validity of special warrants to search for and seize private papers.

The warrant under which Wilkes was arrested was issued by Lord Halifax, principal secretary of state under George III, ordering all "His Majesty's officers, civil and military, and loving subjects whom it may concern" to "make strict and diligent search for the authors, printers and publishers of a seditious and treasonable paper" and to bring them in "together with their papers" for examination. A search warrant could scarcely have been phrased in more inclusive terms. The question of its validity

was not passed upon in the Wilkes habeas corpus proceeding which followed, nor was it clearly determined, although it was discussed both by counsel and the justices, in the damage suit of Dryden Leach against three of the king's messengers. Shortly after these cases, however, the House of Commons by resolution declared all general warrants to be illegal "except in cases provided by act of Parliament."

James Otis' thundering condemnation in Boston in 1761 of the odious writs of assistance, "instruments of slavery on the one hand and villainy on the other," preceded by two years the arrest of Wilkes. The controversy over searches and seizures was therefore under way in the colonies before it came to a head in England. But writs of assistance for the apprehension of smugglers and the seizure of customable goods were expressly authorized by act of Parliament, whereas the warrants involved in the English cases were sanctioned neither by the common law nor by statute.

The issue over writs of assistance was one of the flames that lighted the American Revolution. When therefore the state conventions that ratified the Federal Constitution in 1787-88 clamored for amendments that would safeguard individual liberties against the government, it was natural that protection against unreasonable searches and seizures should have been thought of. Hence the Fourth Amendment, which among others was proposed by the First Congress in 1789 and ratified by the states two years later: "The

right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized." Closely related to this declaration both in point of fact and in judicial interpretation is the provision against self-incrimination (q.v.) in the Fifth Amendment.

"Unreasonable searches and seizures" is manifestly an elastic phrase, subject to no precise definition and therefore to considerable latitude in interpretation. The result is that American law upon this subject offers considerable diversity and tendency to vagary. Even where searches and seizures are admittedly illegal the problem of the best means of giving effect to the constitutional guaranty presents itself. The Federal Courts as well as the Courts of more than a third of the states have held the view that the only sufficient means by which the protection can be truly realized is by a refusal on the part of the Courts to receive at trial evidence that has been acquired by the government as a result of an unreasonable search and seizure. This they hold is the only safeguard that will restrain overzealous government enforcing officers.

A majority of the State Courts, however, take a different view. They hold that evidence of crime is evidence no matter how it has been secured and that

the culprit should not go free because his constitutional rights have been abused. As it has been put by Justice Cardozo, the criminal should not go free "because the constable has blundered" [*People v. Defore*, 242 N.Y. 13 (1926)]. The Courts point out that the aggrieved citizen has other remedies against the offending officer. He may, for example, resist the officer who illegally invades his privacy or he may sue him for damages or prosecute him for oppression or ask that he be removed or otherwise disciplined by his superiors.

As was pointed out in the *Wolf* case, the remedies by which the arbitrary conduct of the officers should be checked, what remedies against it should be afforded, the means by which the right should be made effective, are all questions that are not to be so dogmatically answered as to preclude the varying solutions which spring from an allowable range of judgment on issues not susceptible of quantitative solution.

The rule of decision in California is the common law of England as it stood in the year 1850 (*Martin v. Superior Court*, 176 Cal. 289). At common law the remedy against an unlawful search and seizure was an action of trespass. In England from the time of *Leach, Entick and Wilkes* (1763) (19 How. State Trials, 1002, and 1030, 1154) to *Ellias v. Pasmore* (K.B. 1934, Vol. 2) this was considered sufficient. In 1763 Wilkes recovered from the King's Messenger 1000 pounds—no mean sum then or now. In the *Ellias* case, Sir Stafford Cripps, K.C., recovered 40 pounds

and costs on behalf of the members of the National Unemployed Workers.

In California, following the common law tradition, the citizen has secured to him the same protection for his right to immunity from unlawful searches and seizures. This remedy is not only theoretical—it is an actuality. In *People v. Rochin,* 101 Cal. App. (2d). 140, at page 143, the Court said: "A remedy of defendant for such highhanded, reprehensible conduct is an action for damages." In *Stern v. Superior Court,* 76 Cal. App. (2d) 772, the California District Court of Appeal ordered the trial Court to return to Stern the sum of $6000 taken from him as the result of an illegal search and seizure. *Silva v. Macauley,* 135 Cal. App. 249, is authority for the proposition that an officer who acts in excess of his authority is liable to answer in damages and affirmed an award of $428 on account of the illegal seizure of crabs. Such liability extends not only to the officer immediately involved but to his principal and his bondsmen as well (*Abbott v. Cooper,* 218 Cal. 425).

What was said in the *Wolf* case about the securing of the guarantees of the 4th and 5th Amendments and "due process" was earlier stated by this Court in *Herbert v. Louisiana* (1926), 272 U.S. 312:

> "What it [due process] does require is that state action, whether through one agency or another, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions and

now infrequently are designated as 'law of the land.'"

The difference between the remedy in the *Weeks* case and the remedy as provided by California and a majority of the states finds a basis in reason and history.

Wilkes and *Leach* and *Entick* had no quarrel with the local peace officer. They were victims of a political persecution carried on by the central government.

Otis and the founding fathers thundered against the officers of the crown and not against the colonial officers.

The 4th and 5th Amendments were aimed at the correction of abuses of authority by a strong central government fresh in the memory of those who participated in the activities of the bodies which ratified the new Constitution and demanded the amendments.

The "patrolman on the beat" will never be part of a "gestapo". The *Wolf* case recognizes this fact and points out that the local police are more amenable to local control and less likely to be the adjuncts of political and religious persecutions.

As Mr. Justice Jackson said in his dissenting opinion in *Brinegar v. United States*, 338 U.S. 160, 181, 93 L. Ed. 1879, 1893:

"This inconsistency does not disturb me, for local excesses or invasions of liberty are more amenable to political correction, the Amendment

was directed only against the new and centralized government, and any really dangerous threat to the general liberties of the people can come only from this source."

Another point remains to be considered.

The objects introduced in evidence were photographic equipment used in counterfeiting, copper plate used in making counterfeit bills, and counterfeit bills. These were the instrumentalities and means by which a crime is committed. These objects were contraband and the property of the United States Government (28 U.S.C., Sec. 492). The order of the United States District Court was void on its face. How could a Court order the instruments and fruits of the crime of counterfeiting to be returned to the criminal? And now the criminal asks this Court to protect him in its possession. The next step will be a request to have a marshal of this Court accompany petitioner while he tries to dispose of the counterfeit bills to prevent the local police from interfering with his possession of the contraband.

The seizure in this case by the police was legal and within the following language of *Harris v. United States*, 331 U.S. 144, 154, 91 L. Ed. 1399, 1407:

"Furthermore, the objects sought for and those actually discovered were properly subject to seizure. This Court has frequently recognized the distinction between merely evidentiary materials, on the one hand, which may not be seized either under the authority of a search warrant

or during the course of a search incident to arrest, and on the other hand, those objects which may validly be seized including the instrumentalities and means by which a crime is committed, the fruits of crime such as stolen property, weapons by which escape of the person arrested might be effected, and property the possession of which is a crime. Clearly the checks and other means and instrumentalities of the crimes charged in the warrants toward which the search was directed as well as the draft cards which were in fact seized fall within that class of objects properly subject to seizure. Certainly this is not a case of search for or seizure of an individual's private papers, nor does it involve a prosecution based upon the expression of political or religious views in such papers."

CONCLUSION.

We submit that California by tradition and practice affords its citizens the protection of the 4th and 5th Amendments to the United States Constitution.

It has deliberately adopted the logic of Cardozo.

While protecting its citizens it has not granted immunity to the criminal.

What was good enough for Wilkes, Leach and Entick and that host of others, the victims of political and religious persecutions, should be good enough for the counterfeiter, the narcotic peddler and all

of the gentry that have occupied the witness chairs of legislative committees and crime commissions.

Dixon asks that the handcuffs be removed from him and that the police be shackled instead.

We are confident that this will not be done.

Dated, San Francisco, California,
October 1, 1951.

Respectfully submitted,

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